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In The
Supreme Court of the United States

No. 302

KIT C. FARWELL; FRANK PHOHLEMMAN;
L. A. DAVIS *et al.*,

Appellants,

VERSUS

AMERADA PETROLEUM CORPORATION;
ANDERSON-PRICHARD OIL CORPORATION;
GULF OIL CORPORATION *et al.*,

Appellees.

BRIEF OF PETITIONERS

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APRIL, 1952.

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OPINION BELOW

The opinion of the Supreme Court of the State of Oklahoma (R. 28) is reported at 204 Okl. 543, 231 P. 2d 997.

JURISDICTION

The final judgment of the Supreme Court of the State of Oklahoma, the highest court in the State of

Oklahoma was entered May 22, 1951 (R. 116). The application for appeal was presented to the Supreme Court of Oklahoma, July 30, 1951. The jurisdiction of this Court rests on Title 28, U.S.C.A.; Sec. 1257; June 25, 1948, Ch. 646, 62 Stat. 929, and Title 28, U.S.C.A., Sec. 2101 (c); June 25, 1948, Ch. 646, 62 Stat. 961, amended May 24, 1949, Ch. 139, Sec. 106, 63 Stat. 104, and the following decisions also sustain the appellate jurisdiction:

Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 76 L. ed. 1062;

Thompson v. Consolidated Gas Utilities, 300 U.S. 55, 81 L. ed. 510;

Hunter Co. v. McHugh, 320 U.S. 222, 88 L. ed. 5.

The petitioners first raised the Federal questions sought to be reviewed by filing Answers to the Application of the respondents before the Corporation Commission of the State of Oklahoma on May 21, 1947 (R. 813 and 815 - 821 and 825), introduced (R. 809) leave having been first granted to file such Answers. The same Federal questions were again raised on Motion for Judgment before the Corporation Commission (R. 1312 to 1319) and in the Motion for New Trial filed before the Corporation Commission (R. 1300 and 1314). The questions were again raised in their Petition in Error filed in the Supreme Court of the State of Oklahoma appealing from the judgment of the Corporation Commission

(R. 146) and in their Briefs filed in the Supreme Court of Oklahoma and in oral argument before the Supreme Court of Oklahoma, and again in the Petition for Rehearing filed before the Supreme Court of the State of Oklahoma after the decision of said court was first made (R. 79).

The Corporation Commission of the State of Oklahoma did not pass upon the Federal questions raised as appears from Order No. 20289 (R. 1239).

The Supreme Court of the State of Oklahoma by opinion and decision of March 20, 1951, Order of May 22, 1951, denying Petition for Rehearing (R. 116), and Order of the 5th day of June, 1951, denying Application to file Second Amended Petition (R. 130), held that the Unitization Act and Order No. 20289 did not violate Sec. 10, Art. I of, or the 5th, or 14th Amendments to the United States Constitution (R. 28).

1 a. Excerpt from Answer of oil and gas lessors filed with the Corporation Commission May 21, 1947:

"2. For further defense, the undersigned allege that the statute of the State of Oklahoma, being Title 52, Sections 286.1 to 286.17, Oklahoma Statutes Annotated, upon which the petitioners base their application for the creation of the West Cement Medrano Unit, violates:

"(a) The Fourteenth Amendment to the United States Constitution, Section 1, in that it attempts to take the property of the undersigned without due process of law and denies to the undersigned the equal protection of the laws.

"(b) The Fifth Amendment to the Constitution of the United States in that it seeks to take the property of the undersigned without due process of law and without just compensation.

"(c) Article 1, Section 10 of the United States Constitution, in that said statute impairs the obligation of the contract between the undersigned lessors and the petitioning lessees.

"(d) The Fourteenth Amendment to the United States Constitution, Section 1, prohibiting abridgement of privileges and immunities of citizens of the United States". (R. 816).

1 b. Excerpts from Answer of Clyde Kahle, overriding loyalty owner, filed May 21, 1947:

(Same as allegations in Paragraph 1 a.) (R. 827).

1 c. Excerpts from Answer of Tom Potter, minority lessee, filed May 21, 1947:

(Same as allegations in Paragraph 1 a.) (R. 822).

Note: Corporation Commission of the State of Oklahoma did not pass upon or even mention constitutional questions.

3. Excerpt from Petition in Error filed in Supreme Court of the State of Oklahoma:

"1. The said Commission erred in rendering judgment for the defendants in error in that statutes of Oklahoma, Title 52, Sections 286.01 to 236.17 Oklahoma Statutes Annotated and upon which said Commission based its authority to render said judgment, violate the Constitution of the United States of America and particularly violate the following Amendments and Articles thereof to-wit:

"(a) The Fourteenth Amendment to the United States Constitution, Section 1, in that said statutes attempt to take the property of the plaintiffs in error without due process of law and denies to them the equal protection of the laws.

"(b) The Fifth Amendment to the Constitution of the United States in that said statutes seek to take the property of the plaintiffs in error without due process of law and without just compensation.

"(c) Article I, Section 10 of the United States Constitution, in that said statutes impair the obligation of the several separate contracts between the lessor, plaintiff in error, and the lessee, defendants in error.

"(d) The Fourteenth Amendment to the United States Constitution, Section 1, prohibiting abridgement of privileges and immunities of citizens of the United States" (R. 159).

4. Excerpt from opinion of the Supreme Court of Oklahoma denying petitioner's contention that Oklahoma's Unitization Act violates United States Constitution:

"3. House Bill 339 of the 1945 Legislature (Tit. 52, O.S. Supp. 1947, Secs. 286.1 to 286.17) known as the Unitization Act is not violative of Secs. 7, 15, 23 or 24 of Art. II, or Sec. 1 of Art. IV or Secs. 1 or 51 of Art. V of the Constitution of the State of Oklahoma, nor violative of Sec. 10 of Art. I, or of the Fifth or Fourteenth Amendments to the Constitution of the United States" (R. 29).

5. Excerpt from Petition for Rehearing filed in the Supreme Court of the State of Oklahoma:

"The plaintiffs in error call the Honorable Court's attention to the fact that said decision overlooked the

questions decisive of the case and duly submitted by counsel as follows:

*** * * 2. The 14th Amendment to the Constitution of the United States, Section 1, quotes as follows:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"(a). The Unitization Act provides that it can be set in operation only by lessees of 50% of the area of the common source of supply and authorizes said majority owners to expunge the contracts of the lessors and lessees depriving the lessors of valuable contractual rights and relieving the lessees from heavy contractual burdens under the leases and authorizing the said majority owners to take the lands and property of the lessees and use the same for oil and gas purposes and to fix the compensation of the lessors therefor and gives the minority lessees the right to place the Act in operation or to fix the compensation of the parties involved for the loss of their royalty or any other contractual rights or property which patently denies to the lessors and to the minority lessees, all of whom are citizens of the United States, the equal protection of the laws as provided in the above provisions of the United States Constitution. ***

"Article 1, Section 10 of the United States Constitution quotes as follows:

No State shall enter into any treaty, alliance or confederation; grant letters of marque and

reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender of payment of debts; pass any bill of attainder, *ex post facto law*, or law impairing the obligation of contracts; or grant any title of nobility.' [The latter part of the above Section has been omitted.]

• "The Unitization Act violates the Constitution of the United States in that the above Section thereof prohibits any State from passing any law impairing the obligation of contract. An exception has been made to said provision of the Constitution of the United States which permits the States in the exercise of the police power to enact laws impairing contracts provided the exercise of such power is reasonable and nondiscriminatory. The purpose of the exercise of the police power by the State of Oklahoma under the Unitization Act is to insure unit operation of common sources of supply of oil and gas in proper cases. In order to accomplish such unit operation it is not necessary to deprive the lessor of his right to the termination of the lease (under its own terms) for failure to produce oil or gas from the premises, because immediately upon the termination of the lease under its own terms, the lessor and owner of the minerals may be substituted for the former lessee in the unitization program without affecting in any way the unit operation of the common source of supply. The Unitization Act deprives the lessor of his right to terminate his oil and gas lease for failure of the lessee to produce oil or gas from the premises after the expiration of the primary term. It has always been the very essence of 'unless' oil and gas leases that the lessee was obligated to spend large sums of money in the development of the premises for oil and gas in order to extend the lease beyond the primary term and that unless the lessee did drill on the lands and produced oil and gas from the premises within the primary term of the lease that the said lease would expire and

the oil and gas rights revert to the lessor. The oil and gas rights are very valuable otherwise, the lessees would not be engaged in such extensive and expensive operations and litigation. The lessor has the right to hold the lessee to the terms of the contract as they have been fixed and construed for years by the courts of this State, particularly since the enforcement of such contractual rights and obligations in no way interferes with, or impairs the unit operation of any common source of supply which may underlie any part of such oil and gas lease.

"The Unitization Act expunges the implied covenants of the oil and gas leases which require the lessee to fully develop and market and to protect the lease against drainage. It is not necessary to the unit operation of a common source of supply to strike out these covenants. The lessee can still be required to fully develop the common source of supply, to market the oil and gas therefrom, and to protect the same from drainage without affecting, in any way the unit operation of said common source of supply.

o yet the Unitization Act specifically provides for the expungement of implied covenants of the oil and gas leases. The Act further provides that the oil and gas leases, after unitization, should constitute one single oil and gas lease and there is no reason why the said one single lease should not bear all three of the said implied covenants. The Act further provides that a part of a common source of supply may be unitized which patently leaves open an avenue for the drainage of oil and gas to the area of the common source of supply not included in the unit. Drainage from the common source of supply may occur through a well bore drilled through the common source of supply to another common source of supply lying either above or below the unitized common source of supply. It is evident from the physical nature of things that the implied covenants requiring full development subject to the conservation laws of the State, protection against drainage,

and marketing of the oil and gas may be retained in the single lease contract and enforced against lessees without, in any way, interfering with the unit operation of the common source of supply.

"There are also numerous special provisions in the various oil and gas leases which provided, among other things, that the lessor shall have the free use of gas in houses and structures located on the premises. This particular provision is very important to the lessor and was a moving consideration in his execution of the lease. The Unitization Act expunges this provision but such expungement in no way affects the unit operation of the common source of supply. Inasmuch as many of the gas wells will be closed in it might cause the lessee to pipe gas to the lessor's premises, however, this expense would be, as the majority lessees say, *'de minimus.'*" (R. 84 to 89).

6. Excerpt from Order of the Supreme Court of the State of Oklahoma denying petitioners' Petition for Rehearing in the Supreme Court of the State of Oklahoma:

*"In the Supreme Court of the State of Oklahoma,
May 22, 1951.*

"The Clerk is Hereby Directed to Enter the Following Orders:

" * * 33,336 The Palmer Oil Corporation et al.
v. Phillips Petroleum Co.*

"All petitions for rehearing and applications for oral argument in the above styled and numbered causes denied" (R. 116).

7. Excerpt from Application for Leave to File Second Petition for Rehearing filed in the Supreme Court of Oklahoma:

"That the opinion of this court is in conflict with * * * the Constitution of the United States, and the decision of the Supreme Court of the United States in the case of *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306, decided April 24, 1950, as more fully appears from the attached Second Petition for Rehearing" (R. 128).

8. Excerpt from Order of the Supreme Court of the State of Oklahoma denying Application for Leave to File Second Petition for Rehearing:

"In the Supreme Court of the State of Oklahoma.
June 5, 1951.

"The Clerk is Hereby Directed to Enter the Following Orders:

"* * * 33,336 *The Palmer Oil Corp. et al. v. Phillips Petroleum Co.* Application for Leave to File Second Amended Petition for Rehearing in the above styled and numbered cause denied" (R. 130).

The appeal having been perfected within ninety days from date on which the judgment of the Oklahoma Supreme Court became final is timely.

Sec. 2101, Title 28,
U. S. Code Revised.

Appeal is the proper remedy for review of a decision of a State court of last resort in favor of the validity of State statutes and of administration orders issued pursuant to legislative authority claimed to be delegated by such statutes where the statutes and the orders thereunder issued are alleged to contravene the Federal Constitution.

Sec. 1257, Title 28.
U. S. Code Revised;

Hamilton v. Regents of the University of California, 293 U.S. 245, 79 L. ed 343;
Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 89 L. ed. 857;
Market Street Railroad Co. v. Railroad Commission of California, 324 U.S. 548, 89 L. ed. 1171;
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, 85 L. ed. 836;
Postal Telegraph Cable Co. v. Newport, 247 U.S. 464, 62 L. ed. 1215;
Sterling v. Constantin, 287 U.S. 378, 77 L. ed. 375;
Pollock v. Williams, 322 U.S. 4, 88 L. ed. 1095;
Williams v. North Carolina, 325 U.S. 226, 89 L. ed. 1577;
Hoover & A. Co. v. Evatt, 324 U.S. 652, 89 L. ed. 1252;
United Gas Public Service Co. v. Texas, 303 U.S. 123, 82 L. ed. 702;
Memphis Natural Gas Co. v. Beeler, 315 U.S. 649, 83 L. ed. 1090;
Broad River Power Co. v. South Carolina, 281 U.S. 537, 74 L. ed. 1023;
Greenough v. Tax Assessor, 331 U.S. 486, 91 L. ed. 1621, 1630.

QUESTIONS PRESENTED

We believe the questions can best be presented by first setting forth a Brief of the State's statutes in question (52 O.S.A. 286.1 to 286.17) in chronological procedural order as follows:

Excerpt 1

Section 286.3. Jurisdiction of Corporation Commission:

"* * * the Corporation Commission of the State of Oklahoma is hereby vested with jurisdiction, power and authority, and *it shall be its duty, to supervise the administration of this Act.*"

Excerpt 2

Section 286.4 (Last two sentences):

"To give the Commission jurisdiction * * *, the petition shall be filed by, * * * lessees of record of fifty per cent (50%) * * * of the area * * *. The petition * * * shall have attached thereto a recommended *plan of unitization* * * *."

Excerpt 3

Section 286.5. Plan of Unitization (4th paragraph):

"In addition to such other *terms, provisions, and conditions* found by the Commission to * * * effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization as the parties thereto may agree upon * * *, shall provide:

"(a) * * * The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission.

"(b) The division of interest * * * of the unit production among * * * the * * * tracts within the unit area * * *.

"(d) * * * the method of arriving at the compensation therefor, * * * (wells, equipment and other properties).

"g. The time when * * * the unit shall or may be dissolved * * *.

Excerpt 4**Section 286.4 (1st paragraph):**

"If * * * the Commission shall find * * * [here are set forth under (a), (b), (c) and (d) a statement of the cardinal principles of conservation of oil and gas and prevention of waste] * * * it shall * * * enter an order approving the creation of a unit * * * the plan of unitization approved * * * upon such terms and conditions, which are, * * * proper to protect, * * * and adjust the respective rights and obligations of the several persons affected, including royalty owners, * * *, as well as the lessees."

Excerpt 5**Section 286.6:**

"If * * * within sixty (60) days after the entry of an order * * * approving the creating of the same (unit), * * * lessees of record of fifteen per cent. (15) * * * of the unit area * * * shall file written protest * * * against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings * * *."

Excerpt 6**Section 286.9:**

"Each unit * * * shall be * * * corporate, capable of suing, being sued and contracting * * * in its own name. Each such unit shall be authorized on behalf * * * of all the owners of the oil and gas rights within the unit area, * * * to supervise, manage, and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred by the plan of unitization.

"The * * * liabilities of the lessee * * * for the payment of unit expense shall * * * be several * * * and in no event shall a lessee * * * be * * * liable * * * for more than the amount * * * charged to

his interest * * * pursuant to the plan of unitization
* * *

* * * the unit shall have a first * * * lien upon the leasehold interest * * * in the unitized common source of supply * * * in and to each * * * tract * * * to secure the payment of * * * the unit expense charged to * * * such * * * tract. * * *

Excerpt 7

Section 286.10. Property and contract rights (second sentence, 2nd paragraph):

* * * The unit production * * * shall be owned by the several persons to whom the same is allocated under the plan of unitization. * * *

(3rd paragraph):

"The amount of the unit production allocation to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, * * * shall be distributed among * * * the several persons entitled to share in the production for such separately-owned tract * * * in the same proportions, * * * that they would have * * * shared * * * had not said unit been organized. * * *

(Paragraph 4):

"Operations carried on * * * in accordance with the plan * * * shall be * * * considered as a * * * compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area. * * * Wells drilled or operated on

shall * * * be regarded as wells drilled on each separately-owned tract."

In view of the rights given the majority lessees under the above quoted excerpts from the Unitization Act, there are presented the following:

QUESTIONS

1. Whether the failure of the Act [Section 286.4, last two sentences, Excerpt 2, Page 13 of the Brief] to permit the lessors to file a Petition to invoke the statute violates the Article 1, Section 10 of, or the 5th Amendment to or the 14th Amendment to the U. S. Constitution.
2. Whether the failure of the Act [Section 286.5 (b), Excerpt 3, Page 12 of the Brief] to permit the lessors to file a plan for the division of the unit production—violates Article 1, Section 10 of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.
3. Whether the provisions of the Act [Section 286.10, 4th paragraph, Excerpt 7, Page 14 of the Brief], expunging, the provisions, covenants and conditions expressed and implied of the leases favorable to the lessors — violates Article 1, Section 10, of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.
4. Whether the provisions of the Act [Section 286.10, 3rd paragraph, Excerpt 7, Page 14 of the Brief], denying the lessors any right to adjustment on the roy-

alties provided in leases as against the lessees therein— violates Article 1, Section 10 of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.

5. Whether the provisions of the Act [Section 286.10, 4th paragraph, Excerpt 7, Page 14 of the Brief], extending the term of the leases in favor of the lessees and against the lessors— violates Article 1, Section 10 of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.

6. Whether the failure of the Act [Section 286.5 (d), Excerpt 3, Page 12 of the Brief] to permit a minority lessee to file a plan for the fixing of compensation for wells and equipment taken by the majority lessees— violates Article 1, Section 10 of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.

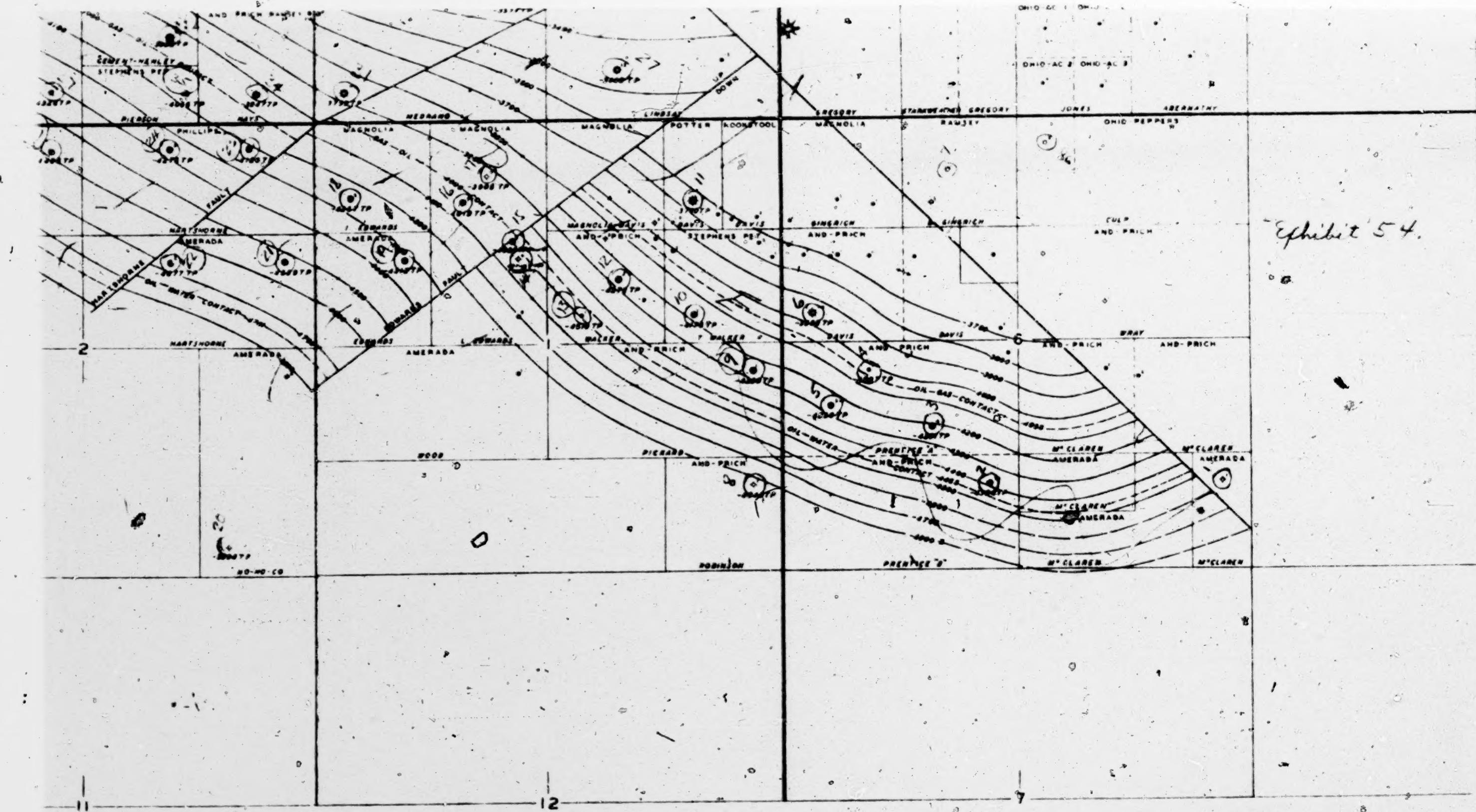
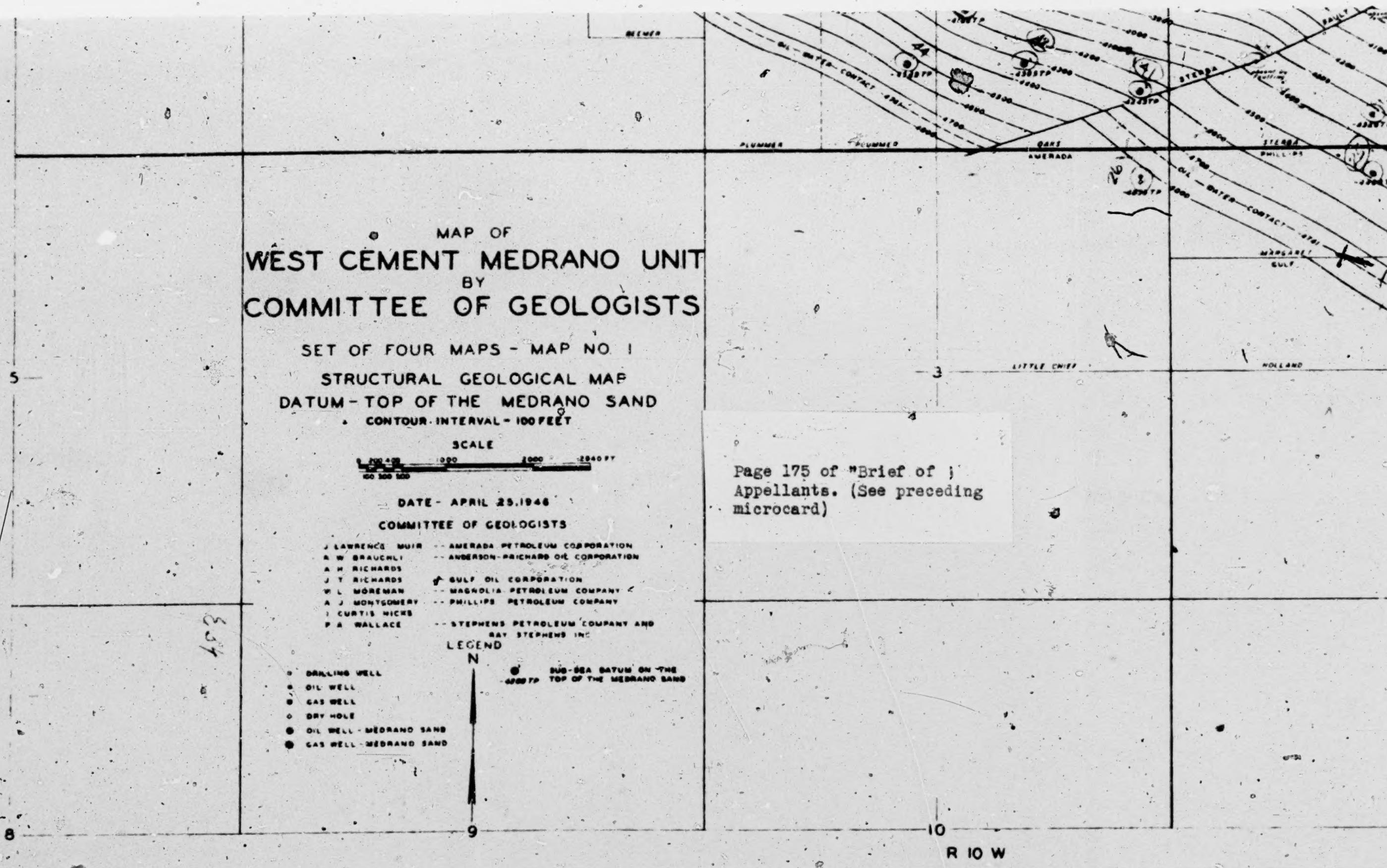
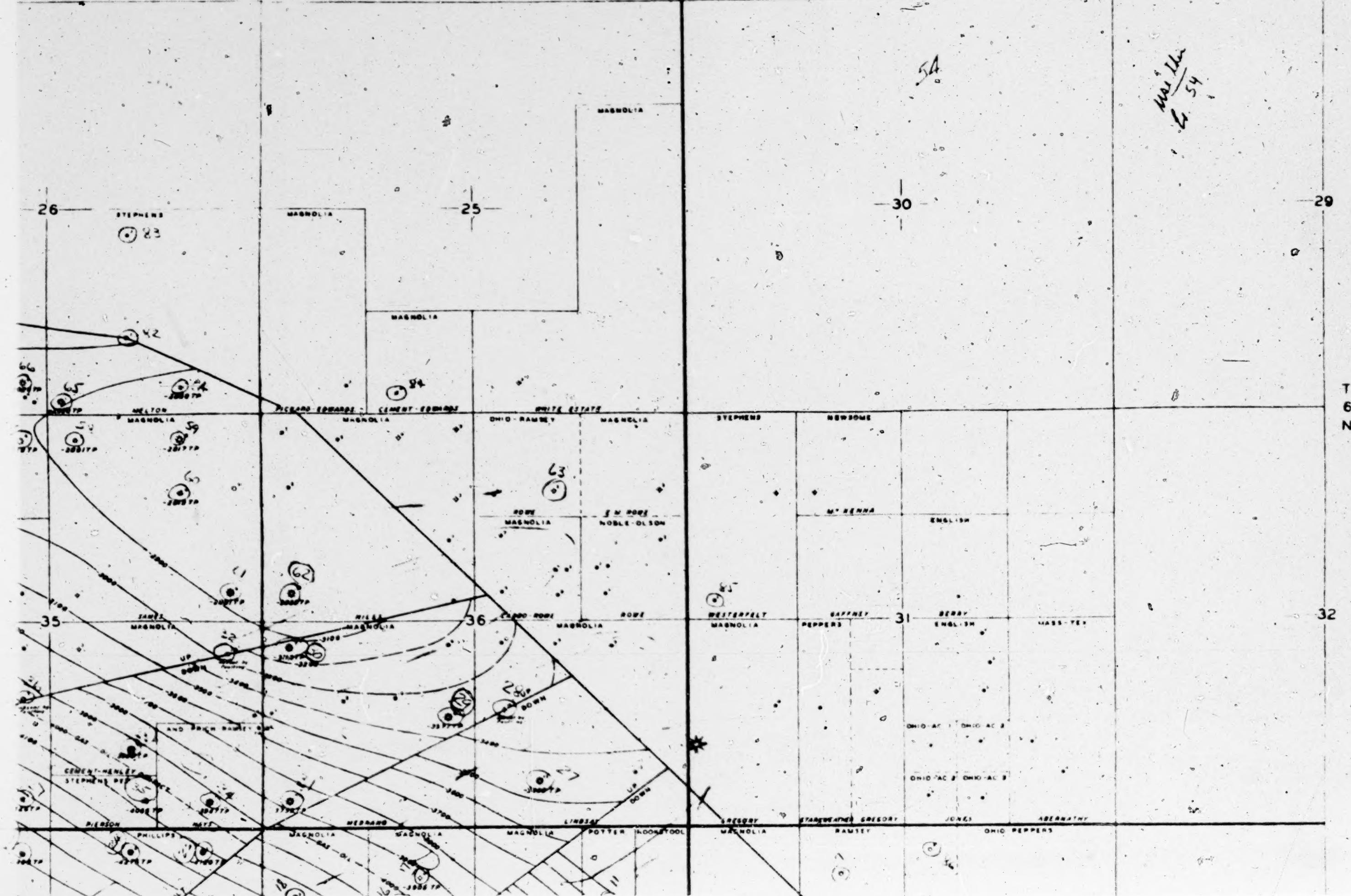
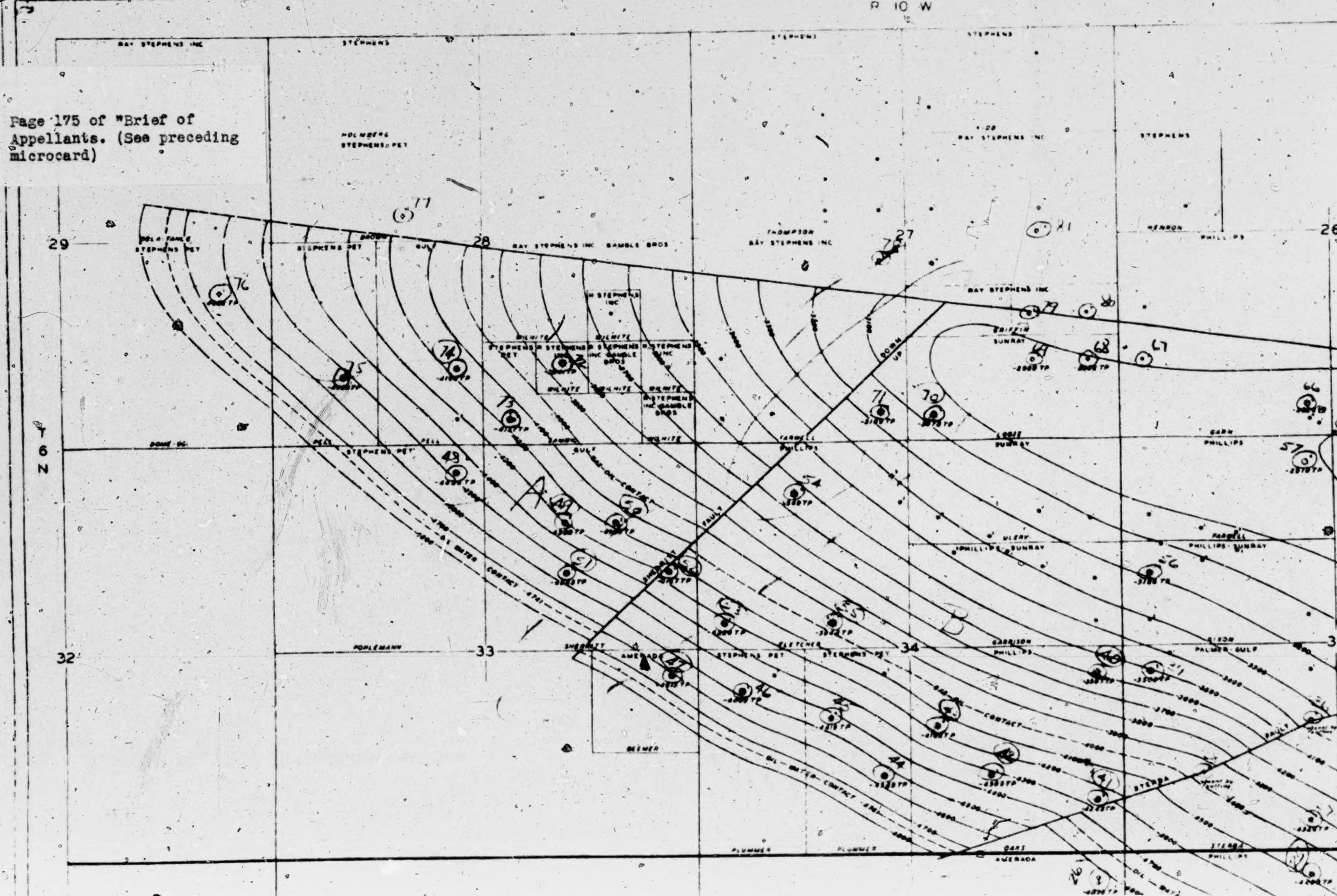
7. Whether the failure of the Act [Section 286.6, Excerpt 6, Page 13 of the Brief] to permit the lessors to file a protest and thereby vacate all action taken under the Act (the division of the oil and gas)— violates Article 1, Section 10, of, or the 5th Amendment to, or the 14th Amendment to the U. S. Constitution.

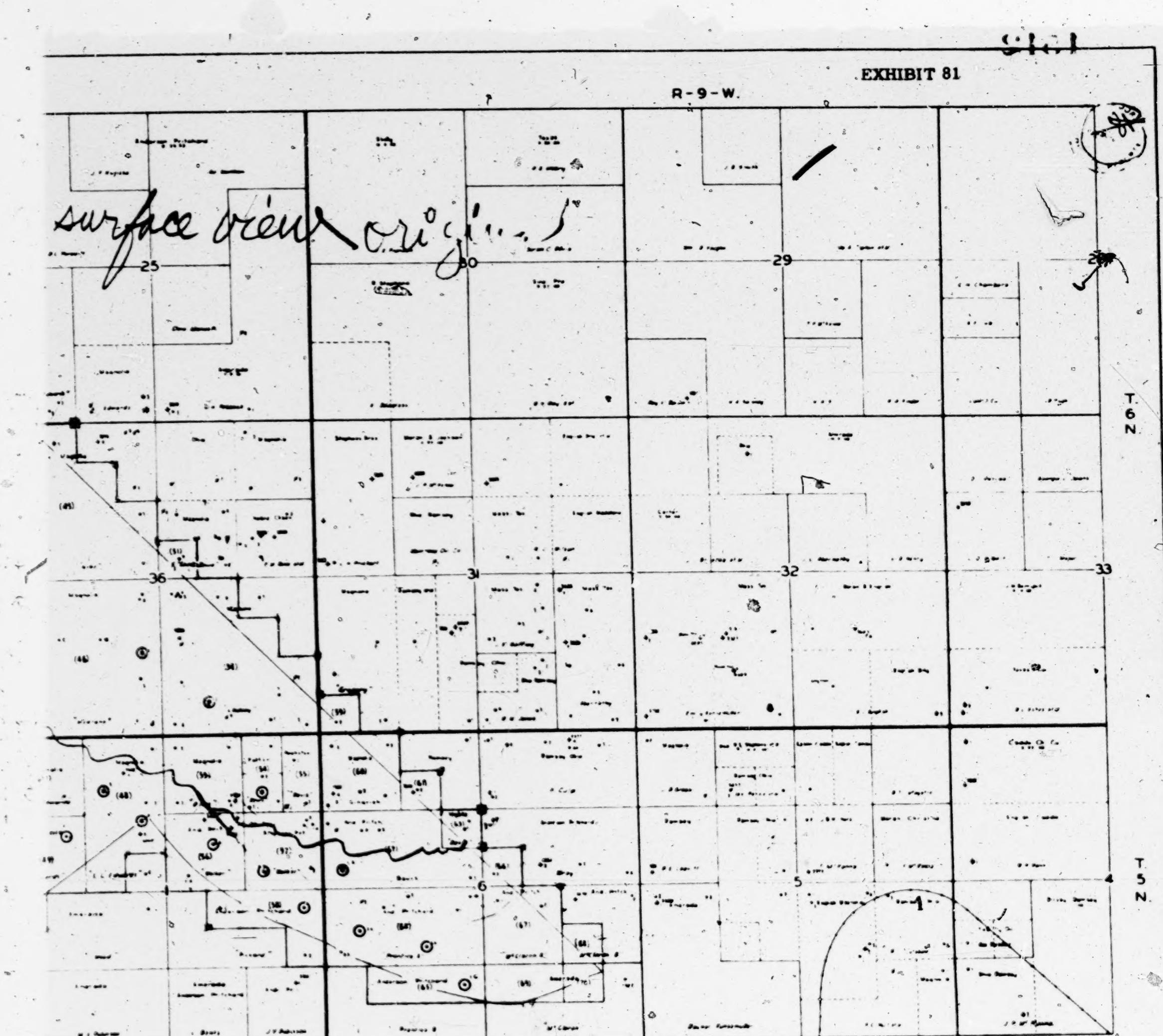
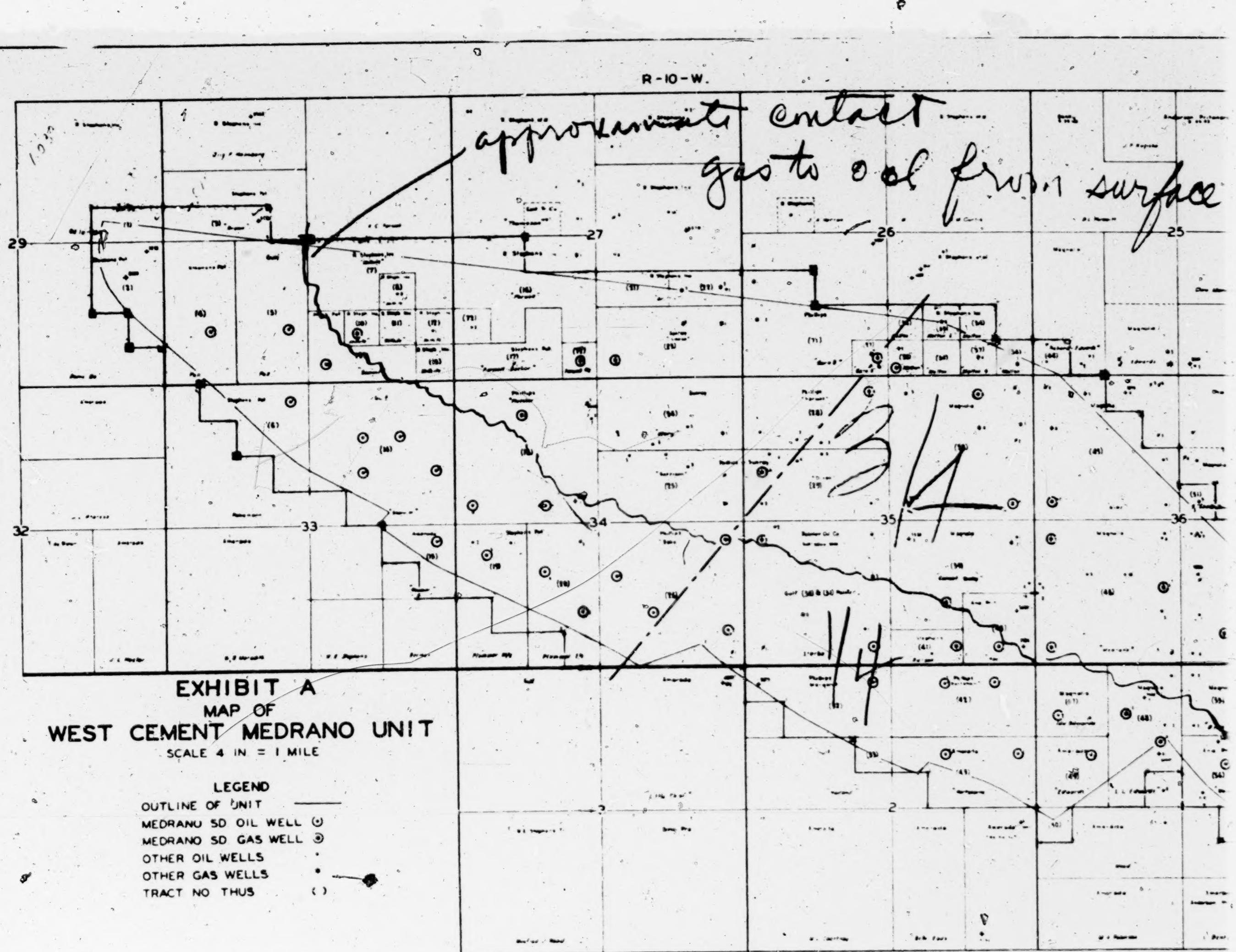
STATUTES INVOLVED

The statutes involved are printed in the appendix.

STATEMENT

This action was commenced under authority of Tit. 52, O.S.A., Secs. 286.1 to 286.17, by Phillips Petroleum





Company and others constituting the leases of record of more than 50% of the area overlying the Medrano Pool, a common source of supply of oil and gas, located in the West Cement Oil Field, Caddo County, Oklahoma, by filing a Petition with a "plan" attached with the Corporation Commission of the State of Oklahoma for the unitization of said common source of supply (R. 172 to 183).

•A reproduction of a map of the area with ownership lines and designating various tracts by number appears opposite. (R. 1512 introduced R. 81—Exhibit 81)

The Oklahoma Corporation Commission is a constitutional body created by Article IX, Section 15, Oklahoma Constitution, and is given authority under Article IX, Section 19, Oklahoma Constitution of a court of record with certain powers therein stated and such additional powers and duties as may be prescribed by law. Title 52, O.S.A., Secs. 241 and 249 charge the Commission with the duty of enforcing the conservation of oil and gas and the prevention of waste thereof. The Commission is not a court of general jurisdiction.

The purpose of the proceeding, among other things, was to expunge the express and implied provisions of the 72 oil and gas leases (R. 1521, per September 7, 1951, Stipulation, R. 1535), covering the 72 severally owned tracts shown on the map insofar as they covered the said common source of supply and to create one oil and gas lease covering the entire common source of sup-

ply; to designate the operator thereof and define his authority over the property; to fix liability for the expenses incurred by the operator; and to divide the oil and gas produced by the operator among the former owners thereof and compensate the lessees for their wells and equipment so taken.

All of these appellants, except Mr. Kahle and Mr. Potter are lessors under the oil and gas leases involved (R. 1473-1474 introduced and stipulated R. 1196-1197). The land of some produced gas only from the common source of supply, the land of others produced oil only therefrom, the land of yet others produced both oil and gas therefrom, the land of still yet others produced nothing whatsoever therefrom, but did produce oil and gas from some other common source of supply, and others produced nothing from any common source of supply. Mr. Kahle owned an overriding royalty under one of the leases involved. Mr. Potter owned a lease with a gas well thereon (see division formula of "Plan," Exhibit 53, Tables 1; 2 and 3, R. 1484 to 1489), introduced R. 305).

The preceding facts appear from the stipulation of interest (R. 1473-1474, introduced R. 1196-1197), giving the name of each appellant lessor with his interest in the oil, gas and minerals set opposite by tracts. The tables attached to the plan showing the oil and gas under each tract and whether or not it is being produced—are said Exhibit 53. There is also set opposite each name the

number or numbers of the tracts as numbered on the map shown after the Appendix of the Brief. Exhibit 53 also shows the estimated amount of oil and gas under each numbered tract and whether or not wells have been drilled thereon, and whether they are oil or gas wells or combination wells and produce both.

The appellants appeared in the proceeding and leave having been granted filed their Answers (R. 815 to 825). The petitioners offered evidence establishing the 72 oil and gas leases (R. 1535, Stipulation of September 7, 1951), a representative copy of all of said leases per Stipulation of September 7, 1951, is set forth as follows:

"Agreement, Made and entered into the 4th day of June, 1941, by and between Mrs. Margaret F. Holland, a widow, of Anadarko, Oklahoma, party of the first part, hereinafter called lessor (whether one or more) and Phillips Petroleum Company, party of the second part, hereinafter called lessee.

"Witnesseth, That the said lessor, for and in consideration of One and no/100 Dollars, cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose of mining and operating for oil and gas, and laying pipelines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all certain tract of land situate in the County of Caddo, State of Oklahoma, described as follows, to-wit:

N $\frac{1}{2}$ NW $\frac{1}{4}$ (Lots 3 and 4), Section 2-5N-10W and containing 80 acres, more or less.

"It is agreed that this lease shall remain in force for a term ending August 6, 1946, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, or the premises are being developed or operated.

"In consideration of the premises the said lessee covenants and agrees:

"1st. To deliver to the credit of lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth part of all oil produced and saved from the leased premises.

"2nd. To pay the lessor, one-eighth value of gas from each well where gas only is found, while the same is being used off the premises, and lessor to have gas free of cost from any such well for all stoves and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the wells at his own risk and expense.

"3rd. To pay lessor for gas produced from any oil well and used off the premises or for the manufacture of casinghead gasoline one-eighth, at the market price for the gas so used, for the time during which such gas shall be used, said payments to be made quarterly.

"If no well be commenced on said land on or before the 6th day of August, 1942, this lease shall terminate as to both parties unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit in the Anadarko Bank and Trust Company, Bank at Anadarko, Oklahoma, or its successors, which shall continue as the depository regardless of changes in the ownership of said land, the sum of (\$80.00) Eighty and no/100 Dollars, which shall operate as a rental and cover the privilege of deferring the commencement of a well for 12 months from said date. In like manner and upon like payments or tenders the commencement of a well

may be further deferred for like periods of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

"Should the first well drilled on the above described land be a dry hole, then, and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payments of rentals, as above provided, that the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments.

"If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid by the lessor only in the proportion which his interest bears to the whole and undivided fee.

"Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of lessor.

"When requested by lessor, lessee shall bury its pipe lines below plow depth.

"No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

"Lessee shall pay for damages caused by its operations to growing crops on said land.

"Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

"If the estate of either party hereto is assigned and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof; and it is hereby agreed in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payment of said rental.

"Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and lessor hereby agrees that any such payments made by the lessee for the lessor shall be deducted from any amounts of money which may become due the lessor under the terms of this lease.

"In Testimony Whereof, We Sign, this the 9th day of June, 1941.

MRS. MARGARET HOLLAND,

• "State of Oklahoma, County of Caddo, SS:

"Be It Remembered, That on this 9th day of June in the year of our Lord one thousand nine hundred and forty-one, before me, a Notary Public, in and for said County and State, personally appeared Margaret F. Holland and to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth. In witness whereof, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

ROY H. HAWKINS,
Notary Public.

(Seal)

"My commission expires 10-26-42" (R. 1512, Stipulation, R. 1535).

Further evidence was offered substantiating the Petition and "Plan." The Corporation Commission entered Order No. 20289, granting the petitioners everything they asked for (R. 1239) as follows:

1. Express and implied covenants of the 72 oil and gas leases were expunged.

The expunged covenants included:

- (a) Obligation of lessee to develop, to protect land against drainage and to market the production.
- (b) The term of the leases (the statute and order perpetuated the leases).
- (c) The royalty clause (the statute and order and petitioners "plan" arbitrarily fixed a new and different royalty).

2. Exclusive operation of the leases was delivered to Phillips Petroleum Company.

3. Liability for the expense incurred by the operator was saddled on each lease owner.
4. The oil and gas produced by the operator was divided among the former owners thereof according to the petitioners' "plan" and the statute.
5. The compensation for the wells and equipment taken was fixed according to the petitioners' "plan."

The appellants appealed from this Order to the Supreme Court of the State of Oklahoma on the ground that the Order and the Unitization Statute, Title 52, O.S.A., Secs. 286.1 to 286.17, upon which it is based unreasonably impair the appellants' contractual rights set forth in said leases and unreasonably take their property without due process of law or just compensation and unreasonably deny the equal protection of the laws to them, contrary to the United States Constitution.

The Supreme Court of Oklahoma held that there was no unreasonable or discriminatory use of the police power by the State in enacting the Unitization Statute or in entering the Corporation Commission Order No. 20289 complained of; nor did the procedure thereunder deny the appellants the equal protection of the laws; nor did the proceeding take their property without just compensation or due process of law.

From this decision the appellants have appealed here.

SUMMARY OF ARGUMENT

The case at Bar does not come within the rule laid down by this Court in the case of *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210; 52 S. Ct. 559, as follows:

"Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may reduce to possession including that coming from land belonging to others, but the right to take and thus acquire ownership is subject to the *reasonable exertion of the power* of the State to prevent unnecessary loss, destruction or waste."

The Unitization Act is an unreasonable exercise of police power by the State of Oklahoma.

It is unreasonable:

1. To impair contractual rights when unnecessary to accomplish the purpose for which the police power is being exercised. The contractual rights impaired are as follows:

- (a) Expungement of implied covenants of lease.
- (b) Change of stipulated royalty which is the principal moving consideration of the lease.
- (c) Extension of the agreed term of lease.

2. (If it is necessary to impair contractual rights), then it is unreasonable to deny due process of law to one whose property is taken and whose contractual rights are impaired. The due process denied follows:

- (a) A hearing denied lessors to determine whether or not they,

1. Are damaged by expungement of implied covenants of lease and if so, how much.
2. Are damaged by extension of the term of their leases and if so, how much.
3. Are entitled to an adjustment of their stipulated royalties because of the expungement of the implied covenants and extension of the term of the leases.

3. (If it is necessary to impair contractual rights), then it is unreasonable to deny equal protection of the laws to one whose property is taken and whose contractual rights are impaired. The discrimination practiced follows:

- (a) The lessors are not allowed to.
 1. Submit a plan for division of the oil and gas, nor
 2. Defeat the plan of division by protest. Whereas, the lessees are given these rights and remedies.

ARGUMENT

The rights and properties of the appellant lessors involved in this appeal are evidenced by the representative oil and gas lease (R. 1521, Stipulation R. 1535) appearing at Page 19 of the Brief. The parties have stipulated that the said lease is representative of each lease between each appellant lessor and his separate lessee (R. 1535). The stipulation was made because the leases are practically identical in form and there were so many

leases introduced in evidence that it would have been extremely burdensome to the record, as well as, repetitious to have included all of them. It will be borne in mind that there were approximately 72 separate and distinct oil and gas leases involved, all of which were between different sets of parties.

The appellant lessors have certain definite rights and property and the lessees definite obligations under the terms of said leases. The leases have been construed and defined by the Oklahoma courts as to their nature and type, and rights and liabilities of the parties and definition of various terms. In order to better understand the rights of the appellant lessors, and obligations of the lessees we think that it is helpful to set out the various decisions of the Oklahoma courts construing the leases.

DEFINITION OF OIL AND GAS LEASE

"Under Oklahoma law, an 'oil and gas lease' is an 'incorporeal hereditament' or a 'profit a prendre,' and an 'interest' in real property."

United States v. Stanolind Crude Oil Purchasing Co. (Okl. C.C.A.), 113 F. 2d 194, Syl. 1.

LAWS APPLICABLE AND CONSTRUCTION

"Rights granted by oil and gas deeds and leases, made in Oklahoma, where property is situated, are to be determined by Oklahoma laws."

Crain v. Pure Oil Co. et al.
(Okl. C.C.A.), 25 F. 2d 824, Syl. 2.

"Under the laws of Oklahoma, oil and gas leases should be construed most strongly against the lessees."

Crain v. Pure Oil Co., supra, Syl. 12.

"Under the laws of Oklahoma, oil and gas leases should be construed so as to promote development and prevent delay, where the terms thereof will permit it."

Crain v. Pure Oil Co., supra, Syl. 13.

"Oil and gas leases in this jurisdiction are construed strongly against the lessee, and in favor of the lessor, and where its terms will permit it under the rules of law, such lease will be construed so as to promote development and prevent delay."

Garfield Oil Co. v. Champlin et al.,

78 Okl. 92, Syl. 3.

"Where an oil and gas lease expressly provides that rights of parties shall terminate if no well be drilled within a fixed period unless the lessee on or before that date shall pay or tender to the lessor a fixed sum, time is of the essence of the contract."

Garfield Oil Co. v. Champlin et al.,

supra, Syl. 4.

"Under the decisions in this State, oil and gas, while in the earth, unlike solid minerals, are not subject to ownership distinct from the soil and the grant of the oil therefore is a grant, not of the oil that is in the ground, but of such a part as the grantee may find. An 'unless' lease is subject to termination at the will of the lessee, which privilege may be exercised by a mere failure to pay the stipulated rental at the time due, upon the happening of which the lease automatically terminates, and the

lessor cannot maintain an action against the lessee for rentals."

Garfield Oil Co. v. Champlin et al.,
supra, Syl. 5.

CHARACTER OF CONTRACT

The representative oil and gas lease at Page 19 of the Brief is what is commonly termed by the courts an "unless" lease. The nature of the contract created by the "unless" lease is stated as follows:

"Unless' lease is a valid mutual contract."

Brunson v. Carter Oil Co.
(Okl., D.C.), 263 F. 935.

DEFINITIONS OF PARTICULAR TERMS USED IN LEASE

The terms "bonus," "royalty," "rental," and "working interest" are defined as follows:

"(a) 'Bonus' is said to mean a premium, paid to a grantor or vendor, and strictly as the cash consideration or down payment paid, or agreed to be paid, for the execution of an oil and gas lease."

"(b) The term 'rental,' as used in oil and gas leases, refers to the consideration paid to the lessor for the privilege of delaying drilling operations."

"(c) The term 'royalty' in the strict sense, is held to mean a share of the product or proceeds therefrom, reserved to the owner for permitting another to use the property."

Hinkle et al. v. Gauntt et al.,
210 Okl. 434, 206 P. 2d 1001, Syl. 3.

"Working interest" is defined in *Lathrop v. Eyes-*
stone, 170 Kan. 419, 227 P. 2d 136, 141, as follows:

"The lessee's interest in the oil produced, commonly seven-eighths or whatever the lease provides, is called the working interest."

RIGHTS AND LIABILITIES OF PARTIES UNDER LEASE

"Under the ordinary oil and gas lease, the lessee in developing the premises in the production of oil and gas, is entitled to the possession and use of all that part of the leased premises reasonably necessary in producing and saving the oil and gas, including space to construct tanks and ponds, in which to confine salt water and other waste matter coming from the wells, and also including the space necessary to transport such waste matter from the wells into such tanks or ponds in a reasonably prudent manner."

Pure Oil Co. v. Gear et al.
183 Okl. 489, Syl. 1.

"Neither party to the contract is the arbiter as to whether or not due diligence has been exercised to operate an oil and gas lease."

Patsy Oil & Gas Co. v. Baker.
127 Okl. 77, Syl. 3.

See:

Strange et al. v. Hicks et al.
78 Okl. 1.

OBLIGATION FOR PAYMENT OF ROYALTY WHEN LEASE UNITIZED WITH ANOTHER

"Leaseholders of two separate tracts may unitize their working interests in their leases without consent of royalty holders, and in absence of consent by royalty holders their interests are not bound by unitization agreement."

Bruce v. Ohio Oil Co. et al.
(Okl., C.C.A.), 169 F. 2d 710, Syl. 3.

"If holder of two leases on two separately owned tracts unitizes them without consent of royalty owners and drills a single well upon one of tracts and produces gas under combined acreage through one well, royalty holders of tract on which well is located would receive all of royalty interest in entire production, and operator would become liable for an additional amount to royalty holders under other tract."

Bruce v. Ohio Oil Co., et al., supra, Syl. 4.

FAILURE TO PAY ROYALTY BY LESSEE CONSTITUTES A CONVERSION OF OIL

"When by the terms of an oil and gas lease, it is incumbent upon the lessee to deliver the lessor's share of the oil in the pipe line, and he fails to do so, and the lessor demands the delivery of the oil in the pipe line, settlement for the oil on the basis of its delivery in the pipe line, and the lessee fails, neglects, or refuses to deliver the lessor's share of the oil in the pipe line or make settlement on the basis of the oil delivered in the pipe line, this constitutes conversion of such oil by the lessee."

*Clark v. Slick Oil Co.,
88 Okl. 55, Syl. 5.*

TERM OF LEASE

"Lease for definite term and so long thereafter as oil is found in paying quantities survives definite term, if oil is then being produced in paying quantities, for so long as such production continues and terminates therewith; otherwise it expires within definite term, except where lessor has prevented such production."

*Continental Oil Co., et al. v. Osage Oil & Refining Co., et al. (Okl., C.C.A.),
69 F. 2d 19, Syl. 1.*

“Lessee remaining in possession after expiration of oil lease is tenant at will, and such tenancy may be terminated by either party on notice.”

Continental Oil Co. et al. v. Osage Oil & Refining Co. et al., supra, Syl. 2.

See, also:

United States v. Brown et al.

(Okl., C.C.A.), 15 F. 2d 565, Syl. 2.

“The terms ‘produced’ and ‘produced in paying quantities,’ as used in an oil and gas lease for a given term and as much longer as oil or gas is produced, or produced in paying quantities, have substantially the same meaning, and an oil and gas lease containing the following habendum clause: It is agreed that this lease shall remain in force for a term of five years from this date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, expired five years from the date thereof unless oil or gas was produced in paying quantities from the leased premises.”

Woodruff v. Brady, 181 Okl. 105,

Syl. 1.

“Where an oil and gas mining lease is executed for a given term and as long thereafter as oil or gas is produced from the leased premises, if the lessee at any time subsequent to the expiration of the primary, or given, term, fail to produce oil or gas in paying quantities, except where production may be lessened by reason of a bona fide attempt to increase the same in existing wells, the lease will expire by its own terms.”

Woodruff v. Brady, supra, Syl 2.

It will be noted from the above decisions that the lessor appellants, are under the terms of their respective leases entitled to $\frac{1}{8}$ th of the oil and gas produced from

their lands and that unless oil or gas is produced from the lands through a well drilled thereon within the primary term of years of the lease that said lease automatically expires either at the end of the term of years or upon sooner termination through failure to pay rentals. Under the terms of the lease the lessee is bound to drill a well on the lessor's premises, and produce oil or gas in paying quantities, or his lease will terminate and the oil, gas and mineral rights will revert to the lessor free of all rights of the lessee.

IMPLIED COVENANTS OF OIL AND GAS LEASES

In addition to the above expressed provisions of the oil and gas leases the courts have decreed certain implied covenants.

In the case of *Strange et al. v. Hicks et al.*, 78 Okl. 1, the court held:

Syl. 4:

"If an oil and gas lease does not expressly provide for the operation of the lease after the discovery of either oil or gas or both then there is an implied contract to exercise diligence, under the facts and circumstances of the case, to operate the same, thus making the lease remunerative to the parties to it."

Syl. 5:

"Neither party to the contract is the arbiter as to whether or not due diligence has been exercised to operate an oil and gas lease. If an oil and gas lease is not operated with due diligence under the facts and circumstances of the case, then a court, upon proper showing, may declare the lease forfeited."

In the case of *Pelham Petroleum Co. v. North*, 78 Okl. 39, the court held:

Syl. 4:

"Where the object of the operations contemplated by an oil and gas lease is to obtain a benefit or profit for both lessor and lessee, neither is, in the absence of a stipulation to that effect, the arbiter of the extent to which, or the diligence with which, the operations shall proceed; but both are bound by the standard of what, in the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both."

Syl. 5:

"A stipulation in an oil and gas lease whereby the lessee obligates itself to protect the side lines in case oil is found in paying quantities imposes upon the lessee the same obligation to protect the lessor's land from actual or threatened drainage that the courts universally hold to be upon it in the absence of express stipulation to that effect."

In the case *Amerada Petroleum Corp. et al. v. Sledge*, 151 Okl. 160, the court held:

Syl. 1:

"The oil and gas lease in the case at bar was for a term of two years and as long thereafter as oil or gas was found in paying quantities. Lessee brought in a gas well which produced gas in paying quantities. There is an implied covenant that lessee should use reasonable diligence in further developing said property for oil and gas. The fact that one gas well was brought in on a tract of 110 acres will not relieve the lessee from further development, where the surrounding lands and surrounding development would require that a reasonably prudent person continue to develop said premises."

In the case of *Carter Oil Co. v. Mitchell* (Okl., C.C.A.), 100 F. 2d 950, the court held:

"In order to comply with the implied covenants of a lease to drill off-set wells and to diligently develop the lease, a lessee must do that which, under the circumstances, an operator of ordinary prudence, having regard to the interests of both lessor and lessee, would do."

It appears that under the implied covenants of the oil and gas lease the lessee is required to make an outlay of substantial sums of money in order to hold the leased premises even though he has discovered oil and gas thereon and is ~~producing~~ producing the same in paying quantities. These covenants were established by the courts on the ground that the leases were mutual and that due regard should be given to the interests of both the lessor and the lessee and that neither the lessor nor the lessee was the sole arbiter as to how or when or the extent to which the leased premises were to be developed under the terms of the lease. In other words the courts hold that because the moving consideration for the lease is the royalty oil and gas produced that the lessor has some say as to how and when the lease shall be developed and the extent of the development thereof.

The Oklahoma Legislature made the Corporation Commission of Oklahoma the arbiter of the number or density of the wells required to be drilled to fully develop each producing oil sand or common source of supply by the enactment of the Well Spacing Act of 1935. Title 52,

O.S.A., Sec. 87.1 (Amended by Session Laws 1947, Page 328, Sec. 1). This Court passed upon the Act in the case of *Patterson v. Stanolind Oil & Gas Co. et al.*, 305 U.S. 376, 379, 83 L. ed. 231. It will be noted that the Act authorizes the Corporation Commission of Oklahoma to establish well spacing and drilling units of uniform size and shape [Sec. 87.1 (a)] and limits the size of the units to 40 acres in common sources of supply of oil above 9,990' deep [Sec. 87.1 (c)], and limits the wells thereon, to one well [Sec. 87.1 (b) (1) second paragraph]. The Act also authorizes the Commission to require the owners of the lands within each unit to develop the same as a unit and to divide the royalty among the royalty owners [Sec. 87.1 (d)].

UNCONSTITUTIONAL SECTIONS OF UNITIZATION ACT POINTED OUT

It will be noted from the foregoing decisions of the Oklahoma courts that the implied covenants of oil and gas leases in Oklahoma have been long recognized by the courts and have become a rule of property. It will be also noted that the term clause of the leases has been definitely construed and fixed. The "unless" oil and gas lease automatically expires for failure to pay a rental when due—if the rentals are paid, the lease automatically expires at the end of the primary term, *unless* oil or gas is being produced in paying quantities—if oil or gas is being produced in paying quantities at the end of the

primary term, the lease automatically expires upon the failure of the lessee to produce oil or gas therefrom in paying quantities. It will be also noted that the royalty is the principal moving consideration for the lease and that the lessee's failures to pay the royalty provided in the lease constitutes a conversion of the royalty oil. It will also be noted that the courts have pointed to the royalty clause in establishing the implied covenants of the oil and gas leases and in determining that the "unless" lease is a *mutual lease* and that neither party to the lease is the arbiter as to the extent and manner of the development and management thereof. The courts of Oklahoma have always been the tribunals before which the lessors might bring the lessees for a determination as to how and when the lease should be developed and the manner and extent thereof. This was the situation of the lessors and lessees at the time of the passage of the Unitization Act by the Oklahoma Legislature.

It is apparent that the Act legislates away the property and contractual rights of the lessors. The royalty clause is legislated away by Sec. 286.4, Excerpt 2, Page 14 of the Brief, which provides for the filing of the Petition with a "plan" of unitization attached, and Sec. 286.5, Excerpt 3, Page 12 of the Brief, which states that the plan shall provide the division of interest of the unit production among the tracts within the unit area and Sec. 286.10, Par. 3, Excerpt 7, Page 14 of the Brief.

which provides that the production allotted to each tract and only that amount shall be distributed among the owners of the tract in the same proportions that they would have been shared had not the unit been organized, and Sec. 286.4, Excerpt 4, Page 12 of the Brief, which provides that the Commission shall enter an order creating a unit and approving a "plan" of unitization. In addition the statute further provides that the amount of production allocated to each *tract* and *only that amount* regardless of the actual production of oil and gas from the *tract* shall be considered the production from that *tract* and shall be distributed among the persons entitled thereto in the same proportions in which they would have shared had not the unit been organized. It will be observed from the above mentioned excerpt from the Unitization Act that only the majority lessees are permitted to file a "plan" and that the only method of division of the unit production is fixed by *that plan* which allots a certain percentage of the unit production to each tract. It will be pointed out by the respondents that the Unitization Act, Sec. 286.4, Excerpt 4, Page 12 of the Brief, provides that the unit shall be created upon such *terms and conditions* which are proper to protect and adjust the respective rights and obligations of the several persons affected including royalty owners and overriding royalty owners, as well as, lessees. It will probably be said that this clause gives the Corporation Commission jurisdiction and authority to adjust "rights"

between the lessors and the lessees. By "rights" it is meant the implied covenants of the lease, the term of the lease and the royalty provided therein. We ask that the Court note that the statute provides that the Order of the Commission shall be upon such "terms" and "conditions" as are proper to "protect" and "adjust" the "rights and obligations" of the lessors and lessees. We ask this Court to define and construe what is meant by that wording of the statute. The appellants contend that it has no force because, Sec. 286.10, Excerpt 7, Page 14 of the Brief, provides that the lessor shall receive no more than $\frac{1}{8}$ th of the unit production allotted to the tract which he owns. This clause of the Act precludes any adjustment between the lessor and lessee as to the royalty provided in the lease. The royalty, it will be borne in mind, is the principal moving consideration of the lease. The lessors now inquire, "what relief can the Corporation Commission give us under the statute? What terms or conditions can they add to the order which will adjust, the loss of the royalty, the term of our lease and the implied covenants thereof?". The appellants contend that the words "terms" and "conditions" are not sufficient in their scope and meaning to give authority to the Corporation Commission to render a money judgment, this being the only adjustment that could possibly be made between the lessors and the lessees, inasmuch as, the statute precludes an adjustment of the royalty provided in the leases. We submit that it is not sufficient,

particularly since the jurisdiction of the Commission is definitely limited by the Oklahoma Constitution and the statutes. The constitutional provision creating the Commission is hereinabove set forth showing that it is not a court of general jurisdiction; that its jurisdiction is limited to that fixed by the Oklahoma Constitution and granted by the Oklahoma Legislature.

It will also be noted that in addition to expunging the royalty clause that the Oklahoma Legislature by Sec. 286.10, Paragraph 4, Excerpt 7, Page 14 of the Brief, has stricken down and nullified the implied covenants of the oil and gas leases, as well as, the express covenants thereof, which include the *term* and *royalty* of the leases. The Act provides that operations carried on in accordance with the "plan" shall be considered a compliance with all of the provisions, covenants and conditions express or implied of the oil and gas leases and that wells drilled or operated on any part of the unit area no matter where located shall be regarded as wells drilled on each separately owned tract. It will be noted that the Legislature provided that any well which was operated on any part of the unit area would be regarded as a well drilled on each separately owned tract. In other words, if a well had already been drilled at the time the Unitization Act was passed by the Oklahoma Legislature still it would, under the Act, be considered as having been drilled on every tract included within the unit; so that the primary term of each undeveloped oil and gas lease

is actually extended by the Legislature the same as if the lessees had actually drilled a well on the land and obtained production of oil and gas therefrom. It will be observed from the map on Page 17 of the Brief and the Exhibit 81 (R. 1512), that there are numerous tracts included in the unit upon which no well has been drilled to the common source of supply in question and that some tracts are included upon which no well has been drilled to any common source of supply. The legislative Act therefore arbitrarily extends the term of the lessor's leases.

The same above referred to Section of the Act also relieves the lessees of their obligations under the implied covenants of the oil and gas lease. It will be noted that they are relieved of these obligations, provided their operations are carried on in accordance with the "plan" — and again we call the Court's attention to the fact that these same operators are the ones who have formulated and fixed the "plan."

The appellants contend that the expungement by the Oklahoma Legislature of the royalty clauses, the term clauses, and implied covenants of their leases is done without compensation, whatsoever. That under the Unitization Act the Corporation Commission of Oklahoma can not give the lessors any compensation or adjustment whatsoever. Incidentally this was the position the Corporation Commission took upon the trial and hearing.

The appellants contend that the Unitization Act fails to provide a forum for the determination of whether or not the lessors have suffered any damage, and if so, whether or not they are entitled to any compensation or adjustment for the loss of their rights and property.

The appellants further contend that it is apparent from the evidence and from the record of this case that in order to operate a common source of supply of oil and gas as a unit that it is not necessary to strike out either the royalty clause or the term clause or the implied covenants of the leases. This is undoubtedly a proper statement of the facts and the law for the reason that the State has as much right to regulate the operation for the production of oil and gas whether the ownership thereof is in the hands of the lessee as in the hands of the land-owner; in other words the State can regulate and enforce unit operation of pools just as well, whether the land is leased or not. The perpetuation of the leases in the present lessees can certainly neither add to nor detract from the unit operation of the common source of supply. It will be argued no doubt by the respondents that huge and vast sums of money are required to operate a common source of supply and that somehow or other the lessees will have this great store of money, whereas the lessors will not. In this connection we call the Court's attention to the fact that there are poor lessees the same as there are poor lessors and that there are rich lessors, as well as rich lessees. We also wish the Court to note

that if the enterprise is at all profitable that there will be no lack of new lessees with capital to take over in the event any of the oil lessees become discouraged and let their leases expire by their own terms either express or implied.

**PORTIONS OF THE ORDER OF THE
OKLAHOMA CORPORATION COMMISSION
VIOLATIVE OF THE UNITED STATES CONSTITUTION**

We call the Court's attention to Order No. 20289, of the Corporation Commission of Oklahoma (R. 1239) and particularly to Paragraphs 3, 4 and 5 of the Findings. The Commission found that the unit area consisted of approximately 3700 acres of land; that there were 37 oil wells and 19 gas wells producing from the Medrano Pool; that the lands embraced in the Unit Area were divided into a large number of individual tracts of various size and shape and owned in severalty by a large number of different individuals.

In Paragraph 6, the Commission found that under present competitive methods of operation, treating each tract or lease as a separate operating unit; that there has been and still continues to be wasteful utilization and dissipation of the gas energy in the Medrano Pool to the detriment and injury of the pool as a whole. In connection with this finding we call the Court's attention to the fact that during the hearing of this case before the Commission that an order was entered by the Commis-

sion shutting down every gas well in the Medrano Pool. This order appears at Page 1239 of the record. The gas wells in the pool were actually shut down from the date of the said order and have been shut down ever since. We ask that this Court consider these facts in connection with the above finding of the Commission. We also call the Court's attention to the fact that the finding on dissipation of gas energy appears to be the only practice constituting waste, the prevention of which would result in the conservation of oil and gas as found by the Commission. The Commission further found in Paragraph 6, that to permit the owners of gas wells and high gas-oil ratio wells to continue to produce will result in robbing the oil wells of gas energy required to produce the oil; and that to shut in the said wells would deprive the owners thereof of their fair share of the production from the pool. That it is desirable to return to the reservoir the gas produced from the oil wells to supplement the remaining natural gas energy in the pool and retard the decline of reservoir pressure and aid in a water flooding program to be introduced at a later time. That such gas recycling and water injection in the pool can not be done practically without the control of the entire reservoir.

Paragraph 7, of the findings is a reiteration of the statements of Paragraph 6. It is quite apparent that the above practices can be conducted by a unitization of the leases without affecting the royalty clauses, term clauses, or implied covenants thereof. The royalty can very

easily be measured as it is produced from the wells. In the event it is desirable to shut down the production of gas on some leases, then under the law in Oklahoma the lessee may pay "off-set royalty" and continue the primary term of his lease or he may drill a well and thus perpetuate his lease beyond the primary term and still pay "off-set royalty."

Citing:

As to whether or not the implied covenants are satisfied by paying "off-set royalty" is a matter that has long been determined by the Oklahoma courts.

In connection with the loss of the implied covenants of their leases by the lessors, we have said that the lessees have been relieved of heavy development burdens to the lessors, which is not necessary to enforce compulsory unitization of oil and gas pools. The respondents will probably say that the additional cost of applying unitized methods of production such as gas recycling and water flooding will equal the value of the additional oil recovered plus the money saved by the lessees by reason of relief from their heavy drilling obligations. This argument by the respondents is negatived in Paragraph 9 of the Commission's findings. The Commission found that, the estimated additional cost of conducting the recycling and water flooding operations will not exceed the value of the additional oil and gas so recovered. It will be noted that under this finding the drilling cost, from which the lessees have been relieved, is pure profit to

them. We hope the Court will bear this in mind in considering the lessors' loss of their implied covenants by operation of the Unitization Act (Sec. 286.10, Paragraph 4, Excerpt 7, Page ____ of the Brief).

In Paragraph 11, the Commission found that the Plan of Unitization is fair, reasonable and equitable and contains all the terms, provisions, conditions and requirements reasonably necessary and proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owners, as well as, the lessees, and *as will effectuate and accomplish the purposes of the Unitization Act*; that the division of interest set forth in Exhibit B, to the "plan" is fair and equitable and will permit persons to receive their fair and equitable share of the unit production; that the division of interest is fair and reasonably representative of the value of said several tracts for oil and gas purposes; that the taking over and using of the wells and equipment and the compensation therefor are fair, reasonable and equitable. We again call the Court's attention to the fact that the Commission's findings, as to the adjustment of the respective rights and obligations between the royalty owners and the lessees, are qualified by the further finding that said findings are such as will effectuate and accomplish the purposes of the Unitization Act. It will be borne in mind that the Unitization Act permits no adjustment of royalty as between the lessor and lessee and also makes no provision for money judg-

ment, so that, although, it may appear from a casual reading of the statute and the Commission's findings that a fair and equitable adjustment has been made between the lessors and the lessees, still, upon a more careful reading of the statute and the findings, it is apparent that no adjustment, whatsoever, has been made. It will be further noted that the Commission's findings that the division of interest as set forth in Exhibit B, of the "plan" are fair and equitable. This may be true but there is no finding that such a division is necessary to the unit operation of the pool, nor is such a finding required by the statute. But it should be. The appellants contend that just because a division is fair and equitable that the same is not necessarily justified and that persons should be secure in their property, unless it is necessary to take the same under some reasonable exercise of the police power. The fact that the accounting for the oil and gas produced under unit operation is simplified by nullifying the royalty clause, the term clause and implied covenants of the appellants' leases, certainly contributes in no way to gas recycling or water flooding in connection with the recovery of oil and gas.

The Order of the Commission is in comparison with the findings, very brief. It grants the Petition, approves the creation of the unit, defines the area and approves the "plan" and makes it a part of the order. In this connection we call the Court's attention to the fact that the

Unitization Statute requires that the Commission make

such an order and gives it no alternative (Sec. 286.4, first paragraph, Excerpt 4, Page 12 of the Brief).

The Commission retains continuing jurisdiction over the operations carried on by the unit to the same extent as it would have jurisdiction over any other lessee or person producing oil or gas from the Medrano Pool in the absence of the unitization. We frankly admit that we do not know what this part of the order means but we doubt that the Commission is authorized by any statute of Oklahoma to make any change in the division of interest and fixing of rights of the parties as set forth in the Plan of Unitization. We have made a diligent search of the statutes and fail to find any clause in any statute of Oklahoma, which would authorize the Commission to make any adjustment between the lessors and the lessees.

**PORTIONS OF THE OPINIONS OF
THE SUPREME COURT OF OKLAHOMA
VIOLATIVE OF THE UNITED STATES CONSTITUTION**

The decision of the Supreme Court of the State of Oklahoma, in *Palmer Oil Corp. et al. v. Phillips Petroleum Co. et al.*, 204 Okl. 543, 558, violates the above mentioned Sections of the United States Constitution. The second syllabus of the said opinion reads as follows:

"The police power of the State extends to defining the correlative rights of owners in a common source of oil and gas supply, providing for the management, operation and further development of such

common source of supply and distributing the proceeds thereof among those entitled thereto."

We call the Court's attention to the absence of a qualifying clause in the statement of law in Syllabus 2. There should be added to said syllabus, the following:

"Provided, however that no contractual rights shall be impaired unless it is reasonably necessary to the management, operation and development of said common source of supply and distributing the proceeds thereof."

Syllabus 4 of the opinion reads as follows:

"The Unitization Act does not involve any unconstitutional delegation of legislative power by the provision which requires the petition of lessees of record of more than fifty per cent of the area of the common source of supply in order to give the Commission jurisdiction under the Act."

The appellants contend the above statement of the law should be modified by a clause as follows:

"Provided, however, that in the event the petition of the lessees involves impairment of the contractual rights of the lessors that unless such Act permits the filing of a petition and a plan of division said rights by the lessors of record of more than 50% of the area, said Unitization Act will deny to the lessors the equal protection of the laws."

The appellants contend that the fact that the Unitization Act permits the majority lessees to file a petition and plan, does in itself not involve an unconstitutional delegation of legislative power. The unconstitutional delegation of legislative and judicial power arises by the Act permitting the lessees to arbitrarily fix the lessors'

royalty and annul the term and implied covenants of the leases. It could not make any difference whether the Act required only one lessee or all of the lessees to join in the Petition as far as delegation of legislative or judicial power, is concerned. The proposition of permitting the lessees to Petition and nullify the lessors' rights without giving the lessors the same privilege violates the unequal protection of laws clause. The unconstitutional delegation of legislative and judicial power goes to that portion of the Act permitting the lessees to nullify the lessors' contractual rights by their sole and arbitrary action and setting up the Corporation Commission as a "stalking horse," as it were, with no alternative but to approve the nullification of the lessors' rights by the lessees' so-called "plan" and the action of the Act itself. We are of the opinion that this is more a delegation of judicial than legislative power and so argued to the State court.

The opinion in Oklahoma Report 204, Page 547, states:

"Therefore, it necessarily follows that the contention challenges the authority of the Legislature in dealing with matters of policy, which is a realm that is without the scope of judicial inquiry."

This conclusion was based upon two premises that were not at all contended for by the lessors. The said conclusion is later used in the opinion to answer the contention of the lessors that the nullification of the lessors' rights, by the lessees' "plan" and the Act, itself, is an

unauthorized delegation of legislative and judicial power. On Page 549, the opinion states:

"It was within the power of the Legislature to do so because being within its police power to enact the law without the consent of either lessees or royalty owners it was optional with it to require the consent of either. Where privilege is granted to some in such situation the Constitution is satisfied if all similarly situated are treated alike."

The appellants take issue with this statement of the law, as applicable to the case at Bar, in that, the result of the operation of the Petition, and "plan" and the action of the Unitization Act, itself, are to nullify a contract between the lessors and the lessees. It certainly can not be held constitutional to grant a privilege, i.e., filing the "plan" of division, to one contracting party as against another especially when the privilege granted is to nullify the contract itself even if such nullification is required in the necessary and reasonable exercise of the police power, which in this case we do not, by any matter of means, admit. The appellants also contend that the statement of the Oklahoma court above quoted to the effect that since the Legislature could enact the law without the consent of the lessees or lessors that it could require the consent of either, is not substantial reasoning. It is not difficult to get the consent of a lessee to a proceeding that will relieve him of his contractual obligations and rewrite the contract to his heart's desire and at the same time gag and bind his opposing contracting

party. A reading of the excerpts from the Unitization Act and of the findings of the Corporation Commission and of the "plan" clearly and definitely bears out the above statement. If the Legislature had seen fit to require only the consent of the lessors to the activation of the Unitization Act, it is not difficult to discern that the Act would never have been activated. It is true that the lessors have no active part whatsoever, in the gas recycling or water flooding contemplated by the exercise of the Unitization Act, but, on the other hand their royalty rights, lease term rights, and implied covenants are in no way contractually sufficient to prohibit the unit operation of the common source of supply by the voluntary or compulsory joint action of the lessees. We submit that the above quoted conclusions reached by the Oklahoma court are beside the point and beg the question. Again on Page 550 of the opinion the Oklahoma court quotes from the case of *Field v. Barber Asphalt Paving Co.*, 194 U.S. 618, 24 S. Ct. 784, 48 L. ed. 1142, in part as follows:

"The provision in the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."

This case dealt with an improvement ordinance that made a distinction between majority resident owners and non-resident owners. This case is clearly distinguished from the case at Bar by the facts. Surely it can not be said that the same privileges are conferred on the lessees

or that the ~~habilities~~ are the same. The lessors and lessees are parties to the same contract and when a privilege is conferred on one it is to the detriment of the other and vice versa as to liabilities or the relief therefrom.

The Oklahoma court again on Page 550 said:

"Such rights have been so committed in reliance upon the ability of the lessees to produce. Neither the fact of nor the amount of the royalty interest presents any problem for solution in establishing unification because same is recognized and fixed by the law."

The rights referred to by the court in the above quotation are the rights to explore, develop, produce and market oil and gas from the various tracts of land. The appellants take issue with the court's statement that they made their leases in reliance upon the ability of the lessees to produce. No doubt the lessees will so contend in their Brief and in their argument, however, it will be noted from the decisions of the courts in establishing the implied covenants of the leases requiring the lessee to fully develop and protect the lands against drainage, that if the lessee did not develop and produce, that his lease became forfeited or was terminated by the express provisions thereof. There is no evidence in this record and there is no provision in the leases to the effect that the moving consideration for the lease is the lessee's ability to produce. The lessee is either required to produce or his lease terminates and the lessor does not have to rely on the lessee's ability. If the lessee does not have the

ability to produce, the lease terminates according to its own terms and the lessor is at liberty to lease his lands again or operate thereon himself. These statements are borne out by the terms of the leases themselves, as well as, the decisions of the Oklahoma courts hereinabove cited. The statement of the Oklahoma court that neither the fact nor the amount of royalty interest presents any problem for solution in establishing unification because the same is fixed by law, causes the appellants great concern for their rights. In the first place the royalty is not fixed by law but is fixed by private contract by the parties as appears from the leases themselves. The Unitization Act attempts to nullify the private contract and to fix the royalty by law, which the appellants believe presents a serious question and is their reason for being before this Court.

Again on Page 550 the Oklahoma court said:

"By reason of their responsibility the lessees have an interest that is distinctive from that of the royalty owners but it is not adverse thereto because the interests of the latter are dependent upon and must rise or fall with that of the lessees."

The responsibility of the lessees above mentioned is the development of the property and the production of oil and gas therefrom. No doubt the lessees will strongly contend that the above statement of fact by the Oklahoma court is correct, however, the appellants again call the Court's attention to the terms of the leases themselves and of the Oklahoma decisions construing the

same. The appellants submit to the Court that if the lessees' interests had not been adverse to the lessors' interests that the doctrine of implied covenants of oil and gas leases would never have been established. Under the doctrine of implied covenants, one operator must operate as diligently as another; the ability of the operator is not a matter for consideration. Regardless of his ability he must operate in accordance with the covenants, express and implied, of his lease or his lease will terminate. The proponents of the Unitization Act desire that the above statement of the Oklahoma courts may be made true by the decisions of this Court and the appellants in defense can only point to their written contracts and the rules of property construing them. Again the appellants wish to make their position clear to this Court and say that they do not seek the right to engage in the operation of the leases or in the unitized operation of the pool. That is the province of the lessee. But they do object to the nullification of their contracts when such nullification is not necessary in any way to further the unit operation and development of the various leases overlying the Medrano Pool.

On Page 551 the Oklahoma court discussed the Section of the Unitization Statute which limited the royalty to $\frac{1}{8}$ th of the production attributed by the "plan" to each separate tract and we quote a portion thereof, as follows:

"The importance of the segregation of a definite amount of the total production as royalty is manifest and it is further attested by the fact it is made an integral part of all leases where the cost of operation is to be borne by the lessee. It follows that such segregation is as fully important where the operation is unitized and operated as one lease. In such situation the question is whether the proportion of the production to be regarded as royalty is reasonable. The amount thereof is not called in question so far as the same affords the basis of the unit operation, but it is held that the effect thereof is to impose an unlawful burden on any royalty interest in excess of the one-eighth, if such there be. Considering, as we must, that the one-eighth royalty prescribed is reasonable to accomplish the overall purpose, it follows that the right to the exceptional royalty, as such must yield to the extent it militates against the plan but should be preserved to the extent it may be done consistently with such plan. We hold that the Act gives full recognition to such right and only varies the method prescribed in the lease for its enjoyment."

We suggest in answer to the above quoted portion of the opinion that, in the event, the lessee failed to pay the royalty stipulated in the oil and gas lease that, then, the lessors would have an action against the lessee for the conversion of oil by the lessee or, in the event, the lessee's share of the unit cost of operation exceeded the amount of the royalty provided in the lease, that, then and in that event, the lease would terminate by its own terms and the landowner would stand in the shoes of the former lessee.

Of course the appellants contend that the dissenting opinions of the Oklahoma court minority state the cor-

rect rule. The appellants see no need to discuss or amplify the dissenting opinions but adopt them in their entirety.

IMPLIED COVENANTS

(a) Well Spacing Act distinguished from Unitization Act.

The Well Spacing Act is distinguished from the Unitization Act in that the Commission determines the shape and size of the drilling units and the location at which each unit well is to be drilled and also adjusts the correlative rights of the parties in accordance with the evidence in each particular case.

Under the Unitization Act the area to be unitized, the number of wells to be drilled into the entire common source of supply and the location thereof and the division of oil and gas among the parties entitled thereto and the compensation of the lessees for their wells and equipment is fixed by the petitioners.

Under the Well Spacing Act the royalty is divided among the land owners as their interest bears to the whole which the court has held to be equitable since only one well is drilled on the unit. To the contrary under the Unitization Statute the royalty is arbitrarily fixed at an $\frac{1}{8}$ th part of the oil attributable to the particular tract owned by the land owner, and no court is allowed to determine whether or not the lessor is entitled to any

adjustment of his royalty interest by reason of the loss of beneficial and valuable terms of his lease contract. Also the Unitization Act relieves the lessees of their burden under the express and implied covenants of the lease to drill a well on each drilling unit, and permits them to drill as many or as few wells as they desire, thereby relieving the lessee of great financial burdens. The usual $\frac{1}{8}$ th royalty has been fixed at $\frac{1}{8}$ th because the lessees are obligated under the implied covenant to fully develop the land; i.e., to drill one well on each spacing unit. When the lessee is relieved of this heavy drilling obligation the lessor should be compensated and if the parties were in the same position as they were before the lease was made, the amount of the royalty would probably be increased in such cases.

The evidence in the case at Bar discloses that the appellant lessors at the time of the filing of the Petition for unitization were entitled under the implied covenants of their leases to have many additional wells drilled on their lands (R. 933-934). The respondents' expert witnesses testified that the field should be developed on a basis of one well to 20 acres (R. 535). The map at Page 17 of the Brief shows that the respondents were obligated to drill many additional wells on the various leases in order to fully develop the leases on a basis of one well to 20 acres. As a matter of fact ten-acre spacing applied to the field at the time the Petition was filed (R. 538). This onerous obligation was also upon the

shoulders of the respondents when the Unitization Act was first enacted, as well as, at the time the Petition for Unitization was filed (R. 538). We call the Court's attention to the fact that the restrictions against drilling oil wells imposed by the Petroleum Administration for War during World War II had been relaxed for only a short time before the Petition for Unitization was filed so that the various lessors had not had much time to assert their rights for additional development of their respective leases.

Order No. 20289 of the Commission relieved the respondents of these heavy drilling obligations which added nothing to the conservation of oil and gas or to the unit operation of the pool, but did save the lessee a lot of money. We call the Court's attention to the fact that under Order No. 20289 of the Commission and under the Unitization Act the lessors received no compensation or remuneration in damages of any kind for the relief of the lessees from these drilling obligations. If the respondents had been required by the Unitization Act to submit the $\frac{1}{8}$ th royalty clause of their leases to the Corporation Commission for adjustment and the royalty owners had been allowed under the Act to appear and offer their evidence in support of an increase of their royalty or to show the amount of this damage resulting from the relief of the lessees from their drilling obligations, they would have at least had a day in court. The question of fact as to whether or not the lessors

had been damaged or were entitled to some compensation or adjustment of their royalty interest has never been determined by any court and cannot be under the Unitization Act. The findings of the Commission in Paragraph 9 of the order are that the additional cost of unit operation will not exceed the value of the additional oil and gas so recovered. Thus the due process clause is violated. In fact the Act precludes the royalty owners from an adjudication of any kind of their damage for the loss of their valuable rights as aforesaid (Title 52, O.S.A., Sec. 286.10, Paragraph 3, Excerpt 7, Page 14 of the Brief). If the question could have been adjudicated under the Act it could have resulted in an increase in the royalties agreed upon by the lessors and the lessees or it may have resulted as it has. However, the lessees contend that they have a right under the Constitution of the United States to have a court of competent jurisdiction pass upon the facts and determine whether or not they are entitled to any damage or adjustment and if so how much.

At the time the leases were made the parties contemplated that the lessees would develop the leases under existing law which called for one well to each 10-acre tract or one well to each such spacing unit as the Commission might order under the Well Spacing Act not to exceed 40-acre units. Such facts warranted a royalty of $\frac{1}{8}$ th and the lessors leased their lands accordingly. How, however, if it had been within the contemplation of the

parties at the time the leases were made that the lessees would have been relieved of the ordinary and customary drilling obligations for the full development of the lease, the royalty could well have been substantially increased.

The same situation exists as to the so-called "edge leases" appearing on the map at the back of the Brief. These "edge leases" lie at the edges of the common source of supply and are only small areas—possibly 10 acres—and overlie the common source of supply as shown by the map. The "edge lessees" were obligated to drill off-set wells on the edge tracts in order to hold their leases (R. 176), under the law in force at the time the leases were made. The Commission by Order No. 20289 relieved the lessees of this onerous obligation without determining whether or not the lessors should be compensated therefore. The Commission could do nothing else since the Unitization Statute prohibits any adjustment of correlative rights between the lessors and lessees (see Sec. 286.10, Par. 3). The lessors have no right to such a hearing under the Unitization Act.

We submit that in order to operate a common source of supply of oil and gas as a unit that it is not necessary to deprive the lessors of their contractual rights. In the event the lessors' contracts with the lessees become forfeited or terminate for failure to comply with the expressed or implied covenants of the lease such as the failure to develop, protect the premises from drainage or failure to drill within the primary term, the lessor should

have his remedy at law or in equity or either cancel the lease or quiet his title against the lessee, and have his land free of the lease. In such event the lessor would immediately stand in the lessee's shoes, thus in no way affecting the unit operation any more than a transfer of interest by a lessee. The fact that the lessor has entered into an advantageous contract with the lessee is a very good reason to prohibit the lessee from escaping therefrom by an Act of the Legislature cancelling the onerous portion of his contract in the name of conservation of oil and gas when the cancellation of such onerous burden in no way tends to conserve oil or gas. Or if such cancellation does conserve oil or gas which the appellants do not admit and the obligation should be cancelled, still the lessor should not be precluded from a judicial determination as to whether or not he is entitled to an adjustment of his relative rights with the lessee and if so, what?

The case of *Patterson v. Stanolind Oil & Gas Co.*, 305 U.S. 378, 380, 83 L. ed. 233, held constitutional the Oklahoma Well Spacing Act (Okla. Session Laws 1935, Chap. 59; Amended Laws 1947, Sec. 1—Title 52, O.S.A. 87.1). This case can be distinguished from the case at Bar on every point herein contended for. In dismissing the appeal for failure of the plaintiff to raise a substantial question this Court said:

"It is admitted that the Commission made its findings and order after due hearing. The evidence underlying its findings is not in the record. Accord-

ingly, as the State court said, it must be assumed 'that the source of supply of the well in question is common to the land adjoining it and that said pool underlies not only the $6\frac{1}{4}$ acres of land on which the well is located but that it also extends beneath the $3\frac{3}{4}$ acre tract.' In that view the State court applied well settled principles in denying plaintiff's contention under the Fourteenth Amendment."

It will be noted that in the *Stanolind* case it was admitted by the parties that the statute provided for an adjustment of the correlative rights of the parties and that the order complained of was made after hearing thereon. It will also be noted that the evidence underlying the order was not in the record of the case. Whereas, in the case at Bar the Unitization Act expressly prohibits the Commission from adjusting any rights whatsoever between the lessor and lessee and establishes a new contract between the parties and arbitrarily fixes the lessors' royalty without provision for a hearing or an adjudication of any kind (Sec. 286.10, third paragraph, Excerpt 7, Page 14 of the Brief). In addition—the undisputed evidence in the case at Bar disclosed that the lessees had onerous drilling obligations under their leases (R. 934) from which they were relieved by the Unitization Act and Order No. 20289 of the Commission (see Sec. 286.10, Paragraph 4 of the Statute). The Oklahoma Supreme Court in *Palmer Oil Corp. v. Phillips Petroleum Co.*, 204 Okl. 550, said as follows:

"Neither the fact nor the amount of the royalty interest presents any problem for solution in estab-

lishing unitization because the same is recognized and fixed by the law."

We respectfully submit to this Court that the amount of the lessors' royalty in an oil and gas lease is fixed by the private agreement of the parties as set out in the written lease contract. The Oklahoma court failed to otherwise pass upon the lessors' loss of the express and implied covenants of their leases.

It was argued to the Oklahoma Supreme Court that if the destruction of the lessors' rights will not reasonably assist in the accomplishment of the purpose for which the exercise of the police power by the State is authorized or permitted under the United States Constitution, namely and to-wit: the conservation of oil and gas and prevention of waste, then and in that event, the application of the police power is unreasonable and foolish as can easily be seen by the application of simple logic. The evidence of the respondents opines (R. 254) that 50% more oil will be recovered under unit operation than under former methods and that the cost of development will be greatly reduced by reason of the lessees being relieved of onerous drilling obligations placed upon them by the implied covenants of the leases. We will for the purpose of argument admit that this is true since the Corporation Commission so found from the evidence offered by the petitioners and the Supreme Court of Oklahoma so sustained. Considering this proof and these facts, how, now, can the respondents contend

that they did not receive great profit in money under Order No. 20289 of the Commission by reason of their being relieved from their onerous drilling obligations to the lessors? If the lessees do receive such profit and benefit from the order then the lessors, surely, are entitled to some compensation or damage for the lessees' relief from their onerous drilling obligations and if so, how much, rather than have the same arbitrarily fixed at $\frac{1}{8}$ th of the unit production attributed by the lessees to their land.

ROYALTY CLAUSE AND TERM OF LEASES

Returning again to the dicta of the Oklahoma court in which they said the $\frac{1}{8}$ th royalty is fixed by law. It is true that the royalty is usually $\frac{1}{8}$ th part of the oil and gas produced by there are many oil and gas leases in Oklahoma and other States that bear a greater royalty than $\frac{1}{8}$ th of the oil and gas. The only statute in Oklahoma which attempts to fix the royalty between the lessor and the lessee is the Unitization Statute which we are attacking as unconstitutional. It is true that for the purpose of operating a common source of supply of oil and gas as a unit that $\frac{1}{8}$ th of the production thereof may be set aside and not used to defray the expense of operation and this can be done without impairing the contract between the lessors and the lessees. For instance, if an oil and gas lease bearing a royalty of $\frac{1}{4}$ th of the oil and gas produced became a part of a unit operation of a common source of supply and the expense of the operation became so great that it required more than the

value of $\frac{3}{4}$ ths of the oil and gas produced to operate the unit, the lessee might then, at his option and under his private contract pay the lessor the difference and maintain his lease in force; or he might surrender his lease saying that the same is terminated for the reason that oil and gas is not being produced in paying quantities to the lessee, in which event the lessor would then immediately step into the lessee's shoes, insofar as, the unit operation is concerned and would pay his part of the cost of operation and would receive the part of the oil and gas assigned to his land. It is apparent that the Unitization Act, in the name of the conservation of oil and gas and unit operation of pools, extends the term of the leases to the detriment of the lessors and overriding royalty owners which in no way furthers the conservation of oil and gas or the unit operation of common sources of supply thereof.

CONCLUSION

For the reasons stated it is respectfully submitted that the Judgment of the court below should be reversed.

Respectfully submitted,

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APRIL, 1952.

APPENDIX

THE STATUTE OF THE STATE THE VALIDITY OF WHICH IS INVOLVED

"UNITIZED MANAGEMENT OF COMMON SOURCES OF SUPPLY

"#286.1. LEGISLATIVE DECLARATION.

"The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act¹ is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, protected. Laws 1945, p. 162, #1.

"#286.2. COMMON SOURCES OF SUPPLY TO WHICH ACT IS APPLICABLE.

"This Act¹ shall apply only to common sources of supply of oil, oil and gas or gas distillate in this State.

"The provisions of this Act shall not apply to any common source of supply of oil, oil and gas, or gas distillate or any part or parts thereof which at the effective date of this Act are being operated by or under pressure maintenance, repressuring, or secondary recovery methods or operations, provided, that nothing contained in this Act shall prevent the voluntary inclusion and extension of areas in which are located such existing pressure maintenance, re-

¹ Sections 286.1-286.17 of this title.

pressuring, or secondary recovery methods or operations as unit areas under the provisions of this Act. Provided this Act shall not apply to any field where the discovery well, has been drilled twenty (20) years prior to the effective date of this Act. Laws 1945, p. 162, #2.

#286.3. JURISDICTION OF CORPORATION COMMISSION.

"Subject to the limitations of this Act¹ the Corporation Commission of the State of Oklahoma, hereinafter referred to as the 'Commission,' is hereby vested with Jurisdiction, power and authority, and it shall be its duty, to supervise the administration of this Act. Laws 1945, p. 163, #3.

#286.4. THE PETITION FOR AND ORDER CREATING UNIT.

"If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated

¹ Sections 286.1-286.17 of this title.

additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and enter an order approving the creation of a unit composed of the lessees and other persons who under the plan of unitization approved by the Commission are chargeable with the responsibility and cost of contracting such unitized methods of operation, development of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgages, lien claimants and others, as well as the lessees. To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty per cent (50% or more of the area of the common source of supply or portion thereof sought to be unitized. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioners consider to be fair, reasonable and equitable. Laws 1945, p. 163, #4.

"#286.5. UNIT AREA AND PLAN OF UNITIZATION.

"The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

"Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area.

"A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

"The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act¹ and subject to the further requirements hereof, each such plan of unitization as the parties thereto may agree upon shall be fair, reasonable and equitable, and among other proper and equitable provisions, shall provide:

"(a) For the efficient unitized management or control of the further development and operation of

¹ Sections 286.1-286.17 of this title.

the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the several lessees of leases within the unit area, subject to the supervision and direction of the unit, or may be conducted in whole or in part by the unit or some particular operator or operators of a lease or leases in the approved unit area dependent upon what is most beneficial or expedient. The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission.

"(b) The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operators, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission approving the creation of the unit regardless of the well or tract within the unit area from which the same is produced.

"(c) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provisions shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to meet their financial obligations in connection with the unit.

"(d) The procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operations.

"(e) For the creation of an operating committee to have general over-all management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers and prescribing their tenure and time and method for their selection. Each lessee within the unit area shall be entitled to representation on the operating committee and shall have a vote equal to the proportionate interest of such lessee in the unit, provided, where the voting interest of a lessee is such as to control the action taken by the committee, the vote of such lessee shall not serve to carry or defeat action by the committee un-

less such vote is supported by the vote of a majority of the remaining lessees.

"(f) The time when the plan of unitization shall become and be effective.

"(g) The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up. Laws 1945, p. 164, #5.

"# 286.6. OBJECTION TO CREATION OF UNIT.

"If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by the Commission approving the creation of the same, lessees of record of fifteen per cent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen per cent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit. The fact that a lessee joined in the petition seeking authority to create the unit or otherwise participated in any of the steps thereafter taken with the view of creating the same, shall not preclude such lessee from filing a protest pursuant to the provisions of this Section. Laws 1945, p. 165, #6.

"# 286.7. PROCEDURE AND APPEAL.

"Except as otherwise herein expressly provided, all proceedings had under this Act¹ including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the Commission shall be in the form and manner and in accord-

1 Sections 286.1-286.17 of this title.

ance with the procedure and procedural requirements provided in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes 1941, or any amendment thereof with reference to proceedings thereunder. Such additional notice shall be given as may be required by the Commission. The Conservation Officer, his assistant and deputies and the Conservation Attorney shall act without additional compensation as technical advisors to the Commission to the extent that the Commission may require. Any person aggrieved by any order of the Commission made pursuant to this Act may appeal therefrom to the Supreme Court of the State of Oklahoma upon the same conditions, within the same time and in the same manner as is provided in said Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes 1941, for the taking of appeals from the orders of the Commission made thereunder, except in any such appeal the Commission shall be impartial, inactive and shall not be represented directly or indirectly by the Conservation Attorney, the Attorney General or any other public official or person. The Supreme Court on appeal shall have jurisdiction and authority and it shall be its duty to consider the validity of the order of the Commission appealed therefrom. On appeal the order of the Commission appealed from shall be regarded as *prima facie* valid, fair, reasonable and equitable, but if the order is found to be contrary to the clear weight of the evidence, in any one of such respects, the same shall be vacated and set aside and the cause referred to the Commission for further proceedings not inconsistent with the judgment of the court; otherwise the said order shall be affirmed.

"In addition to any other remedy provided in this Act any interested person, firm or corporation within a unit area feeling himself aggrieved by any order of the Commission or the action of a unit thereunder, may at any time institute a suit in the District Court of the County in which the greater part

of the unit area is located, as in other civil suits in equity, against the other lessees within the unit and in such suit have his rights and equities determined. Any person aggrieved by the judgment entered in such an action may appeal therefrom to the Supreme Court of the State of Oklahoma in the time and manner as appeals are taken in other civil actions. To the extent possible under existing laws the Supreme Court shall give precedence to all such appeals in the hearing and disposition thereof. Laws 1945, p. 165, #7.

"#286.8. OPERATIONS IN VIOLATION OF PLAN OF UNITIZATION UNLAWFUL.

"From and after the effective date of an order of the Commission approving the creation of a unit and approving the plan of unitization applicable thereto the drilling of any well into or the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to this extent provided in such plan of unitization shall be unlawful and is hereby prohibited. Laws 1945, p. 166, #8.

"#286.9. THE NATURE, PURPOSES AND FUNCTIONS OF UNITS, AND LIABILITY OF OWNERS OF OIL AND GAS RIGHTS THEREIN FOR UNIT EXPENSE.

"Each unit created under the provisions of this Act¹ shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage and conduct the further development and operations for the pro-

¹ Sections 286.1-286.17 of this title.

duction of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

"The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

"Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold interest only in the unitized common source of supply [exclusive of a one-eighth ($\frac{1}{8}$) royalty interest] in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of a one-eighth ($\frac{1}{8}$) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit thereof is insufficient for that

purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment. A one-eighth ($\frac{1}{8}$) part of the unit production allocated to each separately-owned tract shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners free and clear of all unit expense and free of any lien therefor. Laws 1945, p. 166, #9.

"#286.10. PROPERTY AND CONTRACT RIGHTS.

"Property rights, leases and other contracts, and all rights and obligations shall meet the provisions and requirements of this Act¹ and to any valid and applicable plan of unitization or order of the Commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

"Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separately-owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess shall not be acquired, held or possessed by the unit for its own account but shall be

¹ Sections 286.1-286.17 of this title.

so acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have thereon to secure the payment of unit expense.

"The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this Act, or in the plan of unitization approved by the Commission, shall be distributed among the proceeds thereof paid to the several persons entitled to share in the production for² such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately-owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the right of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

² Probably should read "from."

"Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area. Laws 1945, p. 167, #10.

"#286.11. AMENDMENTS TO PLAN OF UNITIZATION.

"In any proceeding hereunder in which an order is entered creating a unit, the Commission shall retain jurisdiction thereof and of all parties in interest for the purpose of amending the plan of unitization from time to time whenever by reason of changed conditions or otherwise for good cause shown it is made to appear that such amendment is necessary or proper. Such an amendment may be made only upon the petition of lessees of record of ten per cent (10%) or more of the unit area. Any amendment to a plan of unitization made pursuant hereto shall be effective prospectively only from and after the date on which the order providing for such amendment shall become final. The procedure for any such amendment including the filing of a petition, the giving of notice and conduct of the hearing shall be the same as that required for the creation of a unit and the adoption of a plan of unitization in the first instance, insofar as applicable. Laws 1945, p. 168, #1.

“#286.12. ENLARGEMENT OF UNITS.

“The unit area of a unit may be unitized with adjoining and contiguous portions of the same common source of supply including the unit area of another or other units, and a unit created for the unitized management, operation and further development of such enlarged unit area upon the filing of a petition therefor and after notice and hearing, in the same manner, on the same conditions, but subject to the right of lessees of record of fifteen per cent (15%) or more of an existing unit area to protest, and veto such enlargement or merger, all as herein provided with respect to the creation of a unit in the first instance. Upon the creation of a larger unit embracing the unit area of one or more smaller units, the larger unit so created shall thereupon supersede such smaller unit or units. Laws 1945, p. 169, #12.

“#286.13. PUBLIC LANDS.

“The Commissioners of the Land Office, or other proper board or officer of the State having the control and management of State land, and the proper board or officer of any political, municipal, or other subdivision or agency of the State, are hereby authorized and shall have the power on behalf of the State or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to this Act.¹ Laws 1945, p. 169, #13.

¹ Sections 286.1-286.17 of this title.

"#286.14. NO INCOME OR PROFIT SUBJECT TO TAXATION.

"Neither the unit production or proceeds from the sale thereof, nor other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose profit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable. Laws 195, p. 169, #14.

"#286.15. DEFINITIONS.

"For the purposes of this Act,¹ unless the context otherwise requires:

"(a) The term 'lessee' refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas.

"(b) Any reference to a separately-owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas shall have reference thereto only in relation to the common source of supply or portion thereof embraced within the unit area of a particular unit.

"(c) The phrase 'oil and gas' shall refer not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.

"(d) The term 'person' shall mean and include any individual, corporation, partnership, com-

¹ Sections 286.1-286.17 of this title.

law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a common source of supply of oil and gas.

"(e) The term 'unit expense' shall include and mean any and all cost, expense, or indebtedness incurred by the unit in the establishment of its organization, or incurred in the conduct and management of its affairs or the operations carried on by it, authorized by the approved plan of unitization. Laws 1945, p. 169, #15.

"#286.16. CONSTRUCTION OF ACT.

"The provisions of this Act¹ are declared to be severable, and, if any section, sentence, clause or part thereof be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not be construed to affect the validity of the remaining provisions of this Act. Laws 1945, p. 170, #16.

"#286.17. UNITIZATION AGREEMENTS NOT VIOLATIVE OF ANTI-TRUST LAWS OR IN RESTRAINT OF TRADE.

"No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate any of the statutes of this State prohibiting monopolies or Acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce. Laws 1945, p. 170, #17."

¹ Sections 286.1-286.17 of this title.